TEXAS REGISTER

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Andrew Delgado

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*.

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Secretary of State –
Nandita Berry

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
FAX (512) 463-5569

http://www.sos.state.tx.us
register@sos.texas.gov

Staff
Leti Benavides
Dana Blanton
Jeana Bores
Elaine Crease
Jill S. Ledbetter
Michelle Miner
Barbara Strickland
Mirand Zepeda

In This Issue

THE GOVERNOR

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

Proclamation 41-3381

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, issued an Emergency Disaster Proclamation on July 5, 2011, certifying that exceptional drought conditions posed a threat of imminent disaster in specified counties in Texas.

WHEREAS, significantly low rainfall has resulted in declining reservoir and aquifer levels, threatening water supplies and delivery systems in many parts of the state; and

WHEREAS, prolonged dry conditions continue to increase the threat of wildfire across many portions of the state; and

WHEREAS, these drought conditions have reached historic levels and continue to pose an imminent threat to public health, property and the economy; and

WHEREAS, this state of disaster includes the counties of Archer, Armstrong, Bailey, Bandera, Baylor, Borden, Briscoe, Burnet, Callahan, Carson, Childress, Clay, Cochran, Collin, Collingsworth, Colorado, Comal, Comanche, Cooke, Cottle, Crosby, Dallam, Dallas, Denton, Dickens, Donley, Eastland, Edwards, El Paso, Erath, Fisher, Floyd, Foard, Garza, Gillespie, Gray, Grayson, Hale, Hall, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hidalgo, Hockley, Hood, Hudspeth, Hutchinson, Irion, Jack, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Kinney, Knox, Lamb, Lipscomb, Llano, Lubbock, Lynn, Mason, Matagorda, McLennan, Medina, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Potter, Randall, Real, Roberts, Rockwall, Schleicher, Scurry, Shackelford, Sherman, Somervell, Stephens, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terry, Throckmorton, Tom Green, Travis, Val Verde, Walker, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wise and Young.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation and direct that all necessary measures, both public and private as authorized under Section 418.017 of the code, be implemented to meet that threat.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the state of disaster.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 1st day of August, 2014.

Rick Perry, Governor

TRD-201404218

♦ ♦ ♦

Proclamation 41-3382

TO ALL TO WHOM THESE PRESENTS SHALL COME:

BE IT KNOWN THAT I, RICK PERRY, GOVERNOR OF THE STATE OF TEXAS, DO HEREBY ORDER A GENERAL ELECTION to be held throughout the State of Texas on the first TUESDAY NEXT AFTER THE FIRST MONDAY IN NOVEMBER, 2014, being the 4th day of NOVEMBER, 2014; and

NOTICE THEREOF IS HEREBY GIVEN to the people of Texas and to the COUNTY JUDGE of each county who is directed to cause said election to be held at each precinct in the county on such date for the purpose of electing state and district officers, members of the Texas Legislature and members of the United States Congress, as required by Section 3.003 of the Texas Election Code.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 15th day of August, 2014.

Rick Perry, Governor

TRD-201404219

♦ ♦ ♦

Proclamation 41-3383

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the 83rd Third Called Session of the Texas Legislature convened in July of 2013 in accordance with Article IV, Section 8, of the Texas Constitution; and

WHEREAS, during that session, the legislature approved one joint resolution proposing one constitutional amendment by a vote of two-thirds of all the members of each house, pursuant to Article XVII, Section 1, of the Texas Constitution; and

WHEREAS, pursuant to the terms of those resolutions and in accordance with the Texas Constitution, the legislature has set the date of the election for voting on the proposed constitutional amendment to be November 4, 2014; and

WHEREAS, Section 3.003 of the Texas Election Code requires the election to be ordered by proclamation of the governor;

NOW, THEREFORE, I, RICK PERRY, GOVERNOR OF THE STATE OF TEXAS, by the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special election to be held throughout the State of Texas on the FIRST TUESDAY AFTER THE FIRST MONDAY IN NOVEMBER, the same being the 4th day of NOVEMBER, 2014; and

NOTICE THEREOF IS HEREBY GIVEN to the COUNTY JUDGE of each county, who is directed to cause said election to be held in the county on such date for the purpose of adopting or rejecting the constitutional amendment proposed by the joint resolution, as submitted by the 83rd Legislature, Third Called Session, of the State of Texas.

Pursuant to Sections 274.001 and 274.002 of the Texas Election Code, the proposition for the joint resolution will appear as follows:

PROPOSITION 1

"The constitutional amendment providing for the use and dedication of certain money transferred to the state highway fund to assist in the completion of transportation construction, maintenance, and rehabilitation projects, not to include toll roads."

The secretary of state shall take notice of this proclamation and shall immediately mail a copy of this order to every county judge of this state, and all appropriate writs will be issued, and all proper proceedings will be followed, to the end that said election may be held and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas this the 15th day of August, 2014.

Rick Perry, Governor

TRD-201404220

♦ ♦ ♦

Proclamation 41-3384

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, issued an Emergency Disaster Proclamation on July 5, 2011, certifying that exceptional drought conditions posed a threat of imminent disaster in specified counties in Texas.

WHEREAS, significantly low rainfall has resulted in declining reservoir and aquifer levels, threatening water supplies and delivery systems in many parts of the state; and

WHEREAS, prolonged dry conditions continue to increase the threat of wildfire across many portions of the state; and

WHEREAS, these drought conditions have reached historic levels and continue to pose an imminent threat to public health, property and the economy; and

WHEREAS, this state of disaster includes the counties of Andrews, Archer, Armstrong, Bandera, Baylor, Bexar, Blanco, Borden, Briscoe, Burnet, Callahan, Carson, Childress, Clay, Cochran, Collin, Collingsworth, Colorado, Comal, Comanche, Cottle, Crosby, Dallam, Dallas, Dawson, Denton, Dickens, Donley, Eastland, Ector, Edwards, El Paso, Erath, Fisher, Floyd, Foard, Frio, Gaines, Garza, Gillespie, Gray, Grayson, Hale, Hall, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hidalgo, Hockley, Hood, Hudspeth, Hutchinson, Irion, Jack, Jones, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kleberg, Knox, Lamb, Lipscomb, Llano, Lubbock, Lynn, Martin, Mason, Matagorda, McLennan, Medina, Midland, Montague, Moore, Motley, Nolan, Nueces, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Potter, Randall, Real, Roberts, Schleicher, Scurry, Shackelford, Sherman, Somervell, Starr, Stephens, Stonewall, Swisher, Tarrant, Taylor, Terry, Throckmorton, Tom Green, Travis, Uvalde, Val Verde, Walker, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wise, Young and Zavala.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation and direct that all necessary measures, both public and private as authorized under Section 418.017 of the code, be implemented to meet that threat.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the state of disaster.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 29th day of August, 2014.

Rick Perry, Governor

TRD-201404221

♦ ♦ ♦

THE ATTORNEY GENERAL

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

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. 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: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Requests for Opinions

RQ-1217-GA

Requestor:

The Honorable Vince Ryan

Harris County Attorney

1019 Congress, 15th Floor

Houston, Texas 77002

Re: Authority of the Metropolitan Transit Authority of Harris County to participate in the I-610 Dedicated Bus Lane Only Facility (RQ-1217-GA)

Briefs requested by September 29, 2014

RQ-1218-GA

Requestor:

The Honorable Jack Roady

Galveston Criminal District Attorney

600 59th Street, Suite 1001

Galveston, Texas 77551-4137

Re: Appointment of an ex-officio member to the Galveston Housing Authority (RQ-1218-GA)

Briefs requested by September 29, 2014

RQ-1219-GA

Requestor:

The Honorable R. Lowell Thompson

Criminal District Attorney

Navarro County Courthouse

300 West 3rd Avenue, Suite 203

Corsicana, Texas 75110

Re: Whether a commissioners court must compensate a justice of the peace who retires prior to the end of his term (RQ-1219-GA)

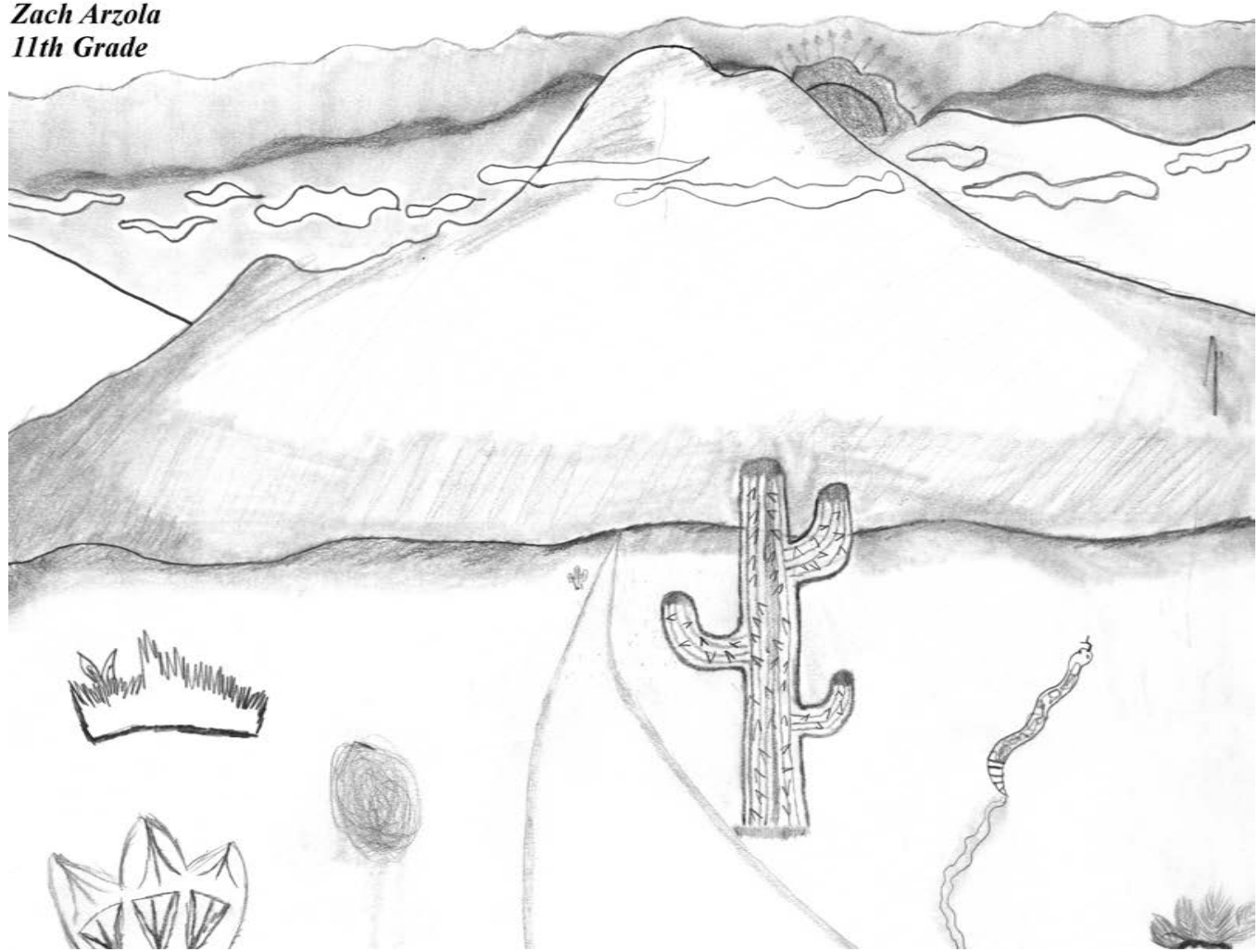
Briefs requested by September 29, 2014

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

TRD-201404354
Katherine Cary
General Counsel
Office of the Attorney General
Filed: September 10, 2014

♦ ♦ ♦

Zach Arzola
11th Grade



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 E. DATE PALM LETHAL DECLINE QUARANTINE

4 TAC §19.51

The Texas Department of Agriculture (the department) adopts on an emergency basis amendments to §19.51 which establish a new quarantined area for a dangerous quarantined disease, date palm lethal decline. The new quarantined area, located in Houston, Harris County, Texas, contains a newly detected infestation of date palm lethal decline. The department believes that establishment of this emergency quarantine area on a temporary basis is both necessary and appropriate in order to effectively contain, combat, and eradicate this infestation of date palm lethal decline and thereby protect the palm nursery industry, landscapers, homeowners and others who have Canary Island date palm, *Phoenix canariensis;* silver date palm, *Phoenix sylvestris;* queen palm, *Syagrus romanzoffiana;* cabbage palm or sabal palm, *Sabal palmetto;* and date palm, *Phoenix dactylifera* in Texas and other states.

These amendments are temporarily adopted on an emergency basis because samples taken from date palms at one location in Houston, Harris County, Texas, have been diagnosed by the Texas A&M AgriLife Extension Plant Disease Diagnostic Laboratory, College Station, Texas, using polymerase chain reaction (PCR) followed by restriction digest analysis to be infected with phytoplasma 16SrIV-D, the causal agent of date palm lethal decline.

The emergency amendments to §19.51 establish a new quarantined area, with a 2-mile radius and a concentric core area with a 1-mile radius centered around an infected palm tree. The emergency amendments make quarantined articles in the quarantined areas subject to requirements necessary to prevent the artificial spread of the quarantined pest and provide for its management and eradication, thus protecting the state's important palm tree nursery industry, landscape industry and residential areas.

The amendments to §19.51 are adopted on an emergency basis under the Texas Agriculture Code (the Code) §71.001, which requires the department to establish a quarantine against any dangerous insect pest or plant disease that exists in any area outside the state but that is new to and not widely distributed in this state; §71.002, which provides the department with the authority to quarantine an area if it determines that a dangerous insect pest or plant disease not widely distributed in this state exists within an area of the state; §71.003, which provides the department with the authority to declare an area pest-free and quarantine surrounding areas if it determines that an insect pest or plant disease of general distribution in this state does not exist in an area; §71.004, which authorizes the department to establish emergency quarantines; §71.005, which requires the department to prevent the movement of quarantined articles from a quarantined area into an unquarantined area, except under adequate safeguards; §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for a specific treatment of quarantined articles; and the Texas Government Code §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§19.51. Quarantined Areas.

The quarantined areas are as follows:

(1) (No change.)

(2) The area within two miles of palm trees infected with the date palm lethal decline disease located at the following site in Kleberg County of Texas:[.]

[~~(A)~~] Latitude 27.52701 N and longitude 97.88132 W.

(3) The area within two miles of the following site in Harris County, Texas:

(A) Latitude 29.8760426 N and longitude 95.46677657 W;

(B) Detailed [~~Detail~~] information on the areas described in paragraphs (2) and (3) of this section [~~subparagraph (A) of this paragraph~~] may be obtained from Environmental and Biosecurity Programs, Agriculture and Consumer Protection Division [~~Regulatory Programs Division~~], Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711; and

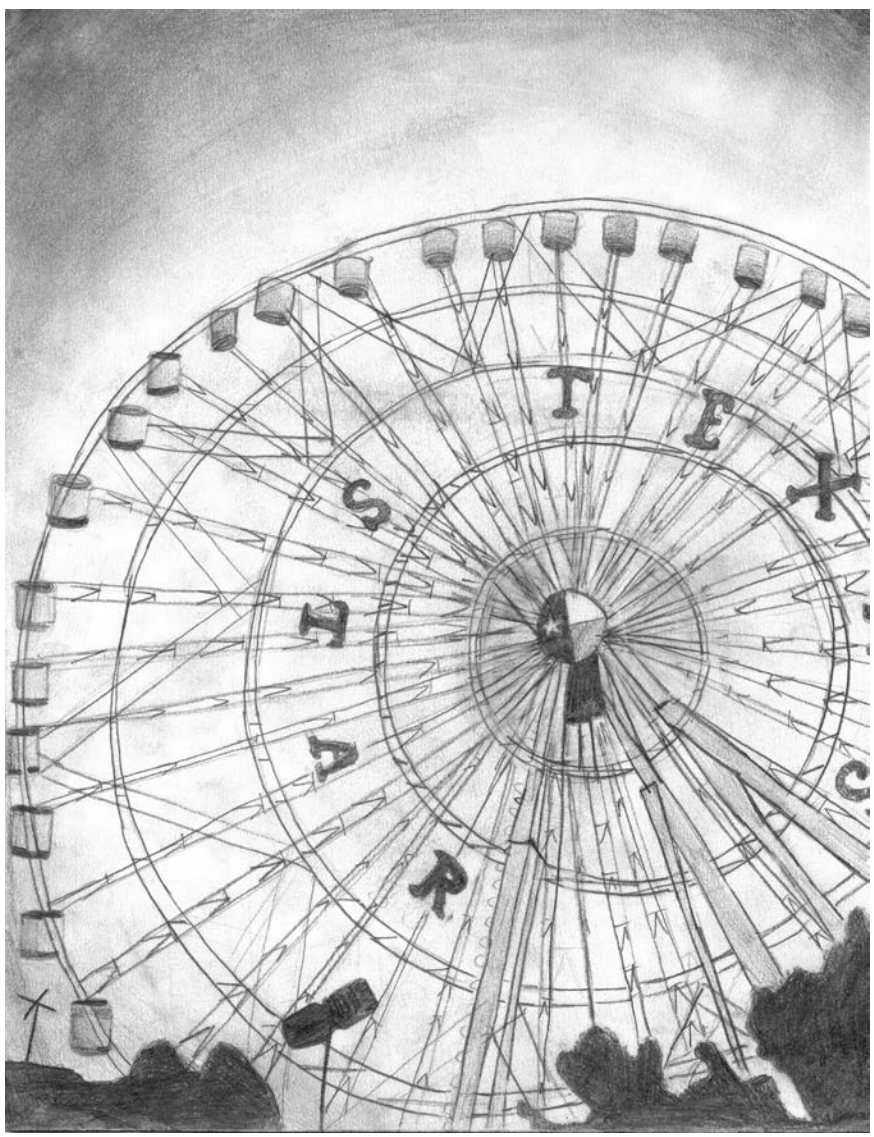
(4) [~~(3)~~] The State of Florida.

The agency certifies that legal counsel has reviewed the emergency adoption 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 2, 2014.

TRD-201404183
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: September 2, 2014
Expiration date: December 30, 2014
For further information, please call: (512) 463-4075

♦ ♦ ♦


T E X
S H A R

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

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

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER A. GENERAL INFORMATION AND DEFINITIONS

10 TAC §§10.1 - 10.4

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 10, Subchapter A, §§10.1 - 10.4, concerning General Information and Definitions. The purpose of the repeal is to allow for the replacement of the existing sections with a new Subchapter A that encompasses requirements for all applications applying for multifamily funding through the Department.

FISCAL NOTE. Timothy K. Irvine, Executive Director, 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.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also 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 repeal will involve the replacement of existing Subchapter A with a new Subchapter A that encompasses requirements for all applications applying for multifamily funding through the Department. There is no change in economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014, to October 20, 2014, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-0764. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed repeal affects Texas Government Code Chapter 2306, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The repeal affects no other statutes, articles or codes.

§10.1. Purpose.

§10.2. General.

§10.3. Definitions.

§10.4. Program Dates.

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 8, 2014.

TRD-201404299
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 19, 2014
For further information, please call: (512) 475-3959

♦ ♦ ♦

10 TAC §§10.1 - 10.4

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Subchapter A, §§10.1 - 10.4, concerning the Uniform Multifamily Rules. The purpose of the proposed new sections is to explain the purpose of the uniform multifamily rules, define terms that are used throughout the various subchapters and applicable to multifamily funding from the Department, and provide guidance on critical program dates associated with the multifamily funding the Department administers. The proposed repeal of existing Subchapter A is published concurrently with this rulemaking.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also 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 to explain the purpose of the uniform multifamily rules, define terms and provide guidance on program dates. The average cost of filing an application is between $15,000 and $30,000, 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.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new or additional economic effect on small or micro-businesses. The average cost of filing an application is between $15,000 and $30,000, 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.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014 to October 20, 2014, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-0764, attn: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The new sections affect no other statutes, articles or codes.

§10.1. Purpose.

This chapter applies to an award of multifamily development funding or other assistance including the award of Housing Tax Credits by the Texas Department of Housing and Community Affairs (the "Department") and establishes the general requirements associated in making such awards. Applicants pursuing such assistance from the Department 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 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules) and other Department rules. This chapter does not apply to any project-based rental or 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.

§10.2. General.

(a) This chapter may not contemplate unforeseen situations that may arise, and in that regard the Department staff is to apply a reasonableness standard in the evaluation of Applications for multifamily development funding. Additionally, Direct Loan funds and other non-Housing Tax Credit or tax exempt bond resources may be made available through a NOFA or other similar governing document that includes the basic Application and funding requirements:

(1) deadlines for filing Applications and other documents;

(2) any additional submission requirements that may not be explicitly provided for in this chapter;

(3) any applicable Application set-asides and requirements related thereto;

(4) award limits per Application or Applicant;

(5) any federal or state laws or regulations that may supersede the requirements of this chapter; and

(6) other reasonable parameters or requirements necessary to implement a program or administer funding effectively.

(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, frequently asked questions, rent and income limits, 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 multifamily rules or 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 multifamily rules to each specific situation as it is presented in the submitted 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 independently perform the necessary due diligence to research, confirm, and verify any data, opinions, interpretations or other information upon which Applicant bases an Application.

(c) 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.

(d) Census Data. Where this chapter requires the use of census or American Community Survey data, the Department shall use the most current data available as of October 1, 2014, unless specifically otherwise provided in federal or state law or in the rules. The availability of more current data shall generally be disregarded. For Rural Area and Urban Area designations, the Department shall use in establishing the designations, the U.S. Census Bureau's Topographically Integrated Geographic Encoding and Referencing ("TIGER") shape files applicable for the population dataset used in making such designations.

(e) Public Information Requests. Pursuant to Texas Government 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, and as a waiver of any of the applicable provisions of Texas Government Code, Chapter 552, with the exception of any such provisions that are considered by law as not subject to a waiver.

(f) Responsibilities of Municipalities and Counties. In providing 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 such resolution will be 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.

(g) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted on or before 5:00 p.m. Central Time Zone on the day of the deadline.

§10.3. Definitions.

(a) Terms defined in this chapter apply to the Housing Tax Credit Program, Multifamily Housing Revenue Bond Program, HOME Program and any other programs for the development of affordable rental property administered by the Department and as may be defined in this title. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning as defined in Texas Government Code Chapter 2306, Internal Revenue Code (the "Code") §42, the HOME Final Rule, and other Department rules, as applicable.

(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 the exterior walls of the existing building remain in place. All units must be contained within the original exterior walls of the existing building. Porches and patios may protrude beyond the exterior walls. 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.

(2) Administrative Deficiencies--Information requested by Department staff that is required to clarify or correct one or more inconsistencies or to provide non-material missing information in the original Application or to assist staff in evaluating the 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. Administrative Deficiencies may be issued at any time while the 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, close-out of a Contract, or resolution of any issues related to compliance.

(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 may be terminated upon foreclosure or deed in lieu of foreclosure. The Department reserves the right to extend the Affordability Period for HOME or NSP 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 the Code §42(b).

(A) For purposes of the Application, the Applicable Percentage will be projected at:

(i) nine percent if such timing is deemed appropriate by the Department or if the ability to claim the full 9 percent credit is extended by the U.S. Congress prior to February 28, 2014;

(ii) forty basis points over the current applicable percentage for 70 percent present value credits, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department; or

(iii) fifteen basis points over the current applicable percentage for 30 percent present value credits, unless fixed by Congress, pursuant to §42(b) of the Code 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 in order of priority on:

(i) the percentage indicated in the Agreement and Election Statement, if executed; or

(ii) the actual applicable percentage as determined by the Code §42(b), if all or part of the Development has been placed in service and for any buildings not placed in service the percentage will be the actual percentage as determined by the Code §42(b) for the most current month; or

(iii) 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 individual or a group of individuals and any Affiliates who file an Application for funding or tax credits subject to the requirements of this chapter or 10 TAC Chapters 11 or 12 and who 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. In administering the application process the Department staff will assume that the applicant will be able to form any such entities and that all necessary rights, powers, and privileges including, but not limited to, site control will be transferable to that entity. The organization, qualification to do business (if needed), and transfer of such rights, powers, and privileges must be accomplished as required in this Chapter and 10 TAC Chapters 11 and 12, as applicable.

(7) Application Acceptance Period--That period of time during which Applications may be submitted to the Department.

(8) Award Letter--A document that may be issued to an awardee of a Direct Loan before the issuance of a Commitment and/or Contract which preliminarily sets forth the terms and conditions under which the Direct Loan will be made available. An Award Letter will typically be contingent on the awardee satisfying certain requirements prior to executing a 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 8 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 2 feet deep and 3 feet wide and high enough to accommodate 5 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 §42(h)(1)(C) of the Code 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 chapter (relating to Housing Tax Credit 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--The notice given by the Texas Bond Review Board (TBRB) to an issuer reserving a specific amount of the state ceiling for a specific issue of bonds.

(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) Colonia--A geographic area that is located in a county some part of which is within one-hundred fifty (150) miles of the international border of this state, that consists of eleven (11) or more dwellings that are located in proximity to each other in an area that may be described as a community or neighborhood, and that:

(A) has a majority population composed of individuals and families of low-income and very low-income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under Texas Water Code, §17.921; or

(B) has the physical and economic characteristics of a colonia, as determined by the Department, and is an area encompassing no more than two (2) square miles.

(20) 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.

(21) Commitment of Funds--Occurs after the Development is approved by the Board and once a Commitment or Award Letter 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, 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.

(22) Committee--See Executive Award and Review Advisory Committee.

(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 by Housing Tax Credits, the period of fifteen (15) taxable years, beginning with the first taxable year of the credit period pursuant to §42(i)(1) of the Code.

(26) Continuously Occupied--The same household has resided in the Unit for at least twelve (12) months.

(27) Contract--See Commitment.

(28) Contractor--See General Contractor.

(29) 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. Controlling entities of a partnership include the general partners, special limited partners when applicable, but not investor limited partners who do not possess other factors or attributes that give them Control. Controlling entities of a limited liability company include but are not limited to the managers, managing members, any members with 10 percent or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership, but not investor members who do not possess other factors or attributes that give them Control. Controlling individuals or entities of a corporation, including non-profit corporations, include voting members of the corporation's board, whether or not any one member did not participate in a particular decision due to recusal or absence. Multiple Persons may be deemed to have Control simultaneously.

(30) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.

(31) Credit Underwriting Analysis Report--Sometimes referred to as the "Report." A decision making tool used by the Department and Board containing a synopsis and reconciliation of the Application information submitted by the Applicant.

(32) 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.

(33) Deferred Developer Fee--The portion of the Developer Fee used as a source of funds to finance the development and construction of the Property.

(34) 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.

(35) Determination Notice--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which specifies the Department's determination as to the amount of tax credits that the Development may be eligible to claim pursuant to §42(m)(1)(D) of the Code.

(36) Developer--Any Person entering into a contractual relationship with the Owner to provide Developer Services with respect to the Development and receiving 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 and receiving less than 10 percent of the total Developer fee. The Developer may or may not be a Related Party or Principal of the Owner.

(37) Developer Fee--Compensation in amounts defined in §10.302(e)(7) of this chapter (relating to 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.

(38) 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; and

(J) any other customary and similar activities determined by the Department to be Developer Services.

(39) Development Site--The area, or if scattered site, areas on which the Development is proposed and to be encumbered by a LURA.

(40) 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 project consisting of multiple buildings that are located on scattered sites and contain only rent restricted units. (§2306.6702)

(41) Development Consultant or Consultant--Any Person (with or without ownership interest in the Development) who provides professional or consulting services relating to the filing of an Application, or post award documents as required by the program.

(42) 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)

(43) 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.

(44) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program, or Housing Trust Fund or other program available through the Department for multifamily development. Direct Loans may also include deferred forgivable loans or other similar direct funding by the Department, regardless if it is required to be repaid. The tax-exempt bond program is specifically excluded.

(45) Economically Distressed Area--An area that is in a census tract that has a median household income that is 75 percent 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 within the five (5) years ending at the beginning of the Application Acceptance Period. Notwithstanding all other requirements, for funds awarded to another type of political subdivision (e.g., a water district), the Development Site must be within the jurisdiction of the political subdivision.

(46) Effective Gross Income ("EGI")--The sum total of all sources of anticipated or actual income for a rental Development, less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

(47) Efficiency Unit--A Unit without a separately enclosed Bedroom designed principally for use by a single person.

(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 §10.305 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 (also referred to as the "Committee")--The Department committee created under Texas Government Code §2306.1112.

(51) Existing Residential Development--Any Development Site which contains existing residential units at any time after 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 Land Use Restriction Agreement or

(B) the date which is fifteen (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 for 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) and (B) of this paragraph:

(A) any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract will be deemed a prime subcontractor; or

(B) if more than 75 percent of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

(55) General Partner--Any person or entity identified as a general partner in articles of limited partnership for the partnership that is the Development Owner and that has general liability for the partnership or that has Control with respect to any such general partner. Where a limited liability corporation is the legal structure employed rather than a limited partnership, the manager 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.

(59) Gross Demand--The sum of Potential Demand from the Primary Market Area ("PMA"), demand from other sources, and Potential Demand from a Secondary Market Area ("SMA") to the extent that SMA demand does not exceed 25 percent of Gross Demand.

(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 Texas Government Code, Chapter 2161 by the State of Texas.

(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 for a specific Application in accordance with the provisions of this chapter and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).

(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) Housing Quality Standards ("HQS")--The property condition standards described in 24 CFR §982.401.

(70) 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.

(71) 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.

(72) 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)

(73) 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.

(74) Managing General Partner--A general partner of a partnership (or, as provided for in paragraph (54) of 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 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.

(75) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates conducted in accordance with §10.303 of this chapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(76) Market Analyst--A real estate appraiser or other professional familiar with the subject property's market area who prepares a Market Analysis.

(77) 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.

(78) Market Study--See Market Analysis.

(79) Material Deficiency--Any deficiency in an Application or other documentation that exceeds the scope of an Administrative Deficiency. May include a group of Administrative Deficiencies that, taken together, create the need for a substantial re-assessment or reevaluation of the Application.

(80) 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.

(81) Net Operating Income ("NOI")--The income remaining after all operating expenses, including replacement reserves and taxes that have been paid.

(82) Net Program Rent--Calculated as Gross Program Rent less Utility Allowance.

(83) Net Rentable Area ("NRA")--The unit space that is available exclusively to the tenant and is typically 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. 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.

(84) Non-HTC Development--Sometimes referred to as Non-HTC Property. Any Development not utilizing Housing Tax Credits or Exchange funds.

(85) 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.

(86) 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.

(87) Office of Rural Affairs--An office established within the Texas Department of Agriculture; formerly the Texas Department of Rural Affairs.

(88) 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 twelve (12) calendar months.

(89) Owner--See Development Owner.

(90) 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.

(91) 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.

(92) Physical Needs Assessment--See Property Condition Assessment.

(93) 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 know as census designated places. The Department may provide a list of Places for reference.

(94) Post Carryover Activities Manual--The manual produced and amended from time to time by the Department which explains the requirements and provides guidance for the filing of post-carryover activities, or for Tax Exempt Bond Developments, the requirements and guidance for post Determination Notice activities.

(95) 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.

(96) Primary Market ("PMA")--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §10.303 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--See Primary Market.

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

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

(B) corporations, Principals include any officer authorized by the board of directors, 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 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder; and

(C) limited liability companies, Principals include all managers, managing members, members having a 10 percent 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.

(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 thereon in connection with the Application.

(101) Property Condition Assessment ("PCA")--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The PCA 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 PCA must be prepared in accordance with §10.306 of this chapter (relating to Property Condition Assessment Guidelines) as it relates to a specific Development.

(102) 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.

(103) Qualified Contract Price ("QC Price")--Calculated purchase price of the Development as defined within §42(h)(6)(F) of the Code and as further delineated in §10.408 of this chapter (relating to Qualified Contract Requirements).

(104) Qualified Contract Request ("Request")--A request containing all information and items required by the Department relating to a Qualified Contract.

(105) Qualified Elderly Development--A Development which is operated with property-wide age restrictions for occupancy and which meets the requirements of "housing for older persons" under the federal Fair Housing Act. The age restrictions associated with or character of such a Development are sometimes referred to as "Qualified Elderly".

(106) Qualified Nonprofit Organization--An organization that meets the requirements of §42(h)(5)(C) of the Code for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the property, meets the requirements of Texas Government Code §2306.6706, and §2306.6729, and §42(h)(5) of the Code.

(107) Qualified Nonprofit Development--A Development which meets the requirements of §42(h)(5) of the Code, includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.

(108) Qualified Purchaser--Proposed purchaser of the Development who meets all eligibility and qualification standards stated in the Qualified Allocation Plan of the year the Request is received, including attending, or assigning another individual to attend, the Department's Property Compliance Training.

(109) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the construction of an equal number of units or less on the Development Site. At least one unit must be reconstructed in order to qualify as Reconstruction.

(110) 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 a Development 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 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.

(111) Related Party--As defined in Texas Government Code, §2306.6702.

(112) 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 with a priority Application over the subject, based on the Department's evaluation process described in §10.201(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;

(C) Comparable Units in previously approved but Unstabilized Developments in the PMA; and

(D) Comparable Units in previously approved but Unstabilized Developments in the Secondary Market Area (SMA), in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.

(113) Report--See Credit Underwriting Analysis Report.

(114) Request--See Qualified Contract Request.

(115) Reserve Account--An individual account:

(A) created to fund any necessary repairs for a multifamily rental housing Development; and

(B) maintained by a First Lien Lender or Bank Trustee.

(116) Right of First Refusal--An Agreement to provide a right to purchase the Property to a nonprofit or tenant organization with priority to that of any other buyer at a price whose formula is prescribed in the LURA.

(117) Rural Area--

(A) A Place that is located:

(i) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area; or

(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

(B) For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §10.204(5) of this chapter (relating to Required Documentation for Application Submission).

(118) Secondary Market (SMA)--Sometimes referred to as "Secondary Market Area." The area defined by the Qualified Market Analyst as described in §10.303 of this chapter.

(119) Secondary Market Area--See Secondary Market.

(120) 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.

(121) Site Control--Ownership or a current contract or series of contracts, that meets the requirements of §10.204(10) of this chapter, that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the owner, to develop a Property and subject it to a LURA reflecting the requirements of any awards of assistance it may receive from the Department.

(122) Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, underground utilities, and site amenities.

(123) 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 §42(h)(3)(C) of the Code, and Treasury Regulation §1.42-14.

(124) 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.

(125) Supportive Housing--Residential rental developments intended for occupancy by individuals or households in need of specialized and specific non-medical services in order to maintain independent living. Supportive housing developments generally include established funding sources outside of project cash flow that require certain populations be served and/or certain services provided. The developments are expected to be free of foreclosable debt or have debt that is subject to cash flow repayment. A Supportive Housing Development financed with tax-exempt bonds with a project based rental assistance contract for a majority of the Units may be treated as Supportive Housing under all subchapters of this chapter, except Subchapter D of this chapter (relating to Underwriting and Loan Policy). The services offered generally include case management and address special attributes of such populations as Transitional Housing for homeless and at risk of homelessness, persons who have experienced domestic violence or single parents or guardians with minor children.

(126) Target Population--The designation of types of housing populations shall include those Developments that are entirely Qualified Elderly and those that are entirely Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations.

(127) 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 §42(h)(4) of the Code, such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(128) 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.

(129) 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 Subchapter F of this chapter (relating to Compliance Monitoring), and published on the Department's web site (www.tdhca.state.tx.us).

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

(A) an Applicant, General Partner, Developer, or General Contractor; or

(B) an Affiliate to the Applicant, General Partner, Developer or General Contractor; or

(C) anyone receiving any portion of the administration, contractor or Developer fees from the Development; or

(D) any individual that is an executive officer or member of the governing board or has greater than 10 percent ownership interest in any of the entities are identified in subparagraphs (A) - (C) of this paragraph.

(131) 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.

(132) Transitional Housing--A Supportive Housing development 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 twenty-four (24) months; and

(B) is owned by a Development Owner that includes a governmental entity or a qualified non-profit 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.

(133) Underwriter--The author(s) of the Credit Underwriting Analysis Report.

(134) Uniform Physical Condition Standards ("UPCS")--As developed by the Real Estate Assessment Center of HUD.

(135) 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.

(136) Unit Type--Units will be considered different Unit Types if there is any variation in the number of bedroom, bathrooms or a square footage difference equal to or more than 120 square feet. For example: A two Bedroom/one bath Unit is considered a different Unit Type than a two Bedroom/two bath Unit. A three Bedroom/two bath Unit with 1,000 square feet is considered a different Unit Type than a three Bedroom/two bath Unit with 1,200 square feet. A one Bedroom/one bath Unit with 700 square feet will be considered an equivalent Unit Type to a one Bedroom/one bath Unit with 800 square feet.

(137) 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 percent occupancy level for at least twelve (12) consecutive months 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.

(138) 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 paragraph (116)(A)(ii) of 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 §10.204(5) of this chapter.

(139) U.S. Department of Agriculture ("USDA")--Texas Rural Development Office (TRDO) serving the State of Texas.

(140) U.S. Department of Housing and Urban Development ("HUD")-regulated Building--A building for which the rents and utility allowances of the building are reviewed by HUD.

(141) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation, §1.42-10 and §10.614 of this chapter (relating to Utility Allowances).

(142) 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.

(b) Request for Staff Determinations. Where the definitions of Development, Development Site, New Construction, Rehabilitation, Reconstruction, Adaptive Reuse, and Target Population fail to account fully for 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 these specific terms and their usage within the applicable rules. 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's determination may take into account the purpose of or policies addressed by a particular rule or requirement, materiality of elements, substantive elements of the development plan that relate to the term or definition, the common usage of the particular term, or other issues relevant to the rule or requirement. All such 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. Such a determination is intended to provide clarity with regard to Applications proposing activities such as: scattered site development or combinations of construction activities (e.g. Rehabilitation with some New Construction). An Applicant may appeal a determination for their Application if the determination provides for a treatment that relies on factors other than the explicit definition. A Board determination or a staff determination not timely appealed cannot be further appealed or challenged.

§10.4. Program Dates.

This section reflects key dates for all multifamily development programs except for the Competitive Housing Tax Credit Program. A program calendar for the Competitive Housing Tax Credit Program is provided in Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). 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 for good cause by the Executive Director for a period of not more than five (5) business days provided; however, that the Applicant requests an extension prior to the date of the original deadline. Extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party.

(1) Full Application Delivery Date. The deadline by which the Application must be submitted to 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 §10.201(2) of this chapter (relating to Procedural Requirements for Application Submission).

(2) Notice to Submit Lottery Application Delivery Date. No later than December 12, 2014, Applicants that receive an advance notice regarding a Certificate of Reservation must submit a notice to the Department, in the form prescribed by the Department.

(3) Applications Associated with Lottery Delivery Date. No later than December 19, 2014, Applicants that participated in the Texas Bond Review Board Lottery must submit the complete tax credit Application to the Department.

(4) Administrative Deficiency Response Deadline. Such deadline shall be five (5) business days after the date on the deficiency notice without incurring a penalty fee pursuant to §10.901 of this chapter (relating to Fee Schedule).

(5) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal (if applicable), Market Analysis and the Site Design and Development Feasibility Report). For Direct Loan Applications, the Third Party reports must be submitted with the Application in order for it to be considered a complete Application. For Tax-Exempt Bond Developments, the Third Party Reports must be submitted no later than seventy-five (75) calendar days prior to the Board meeting at which the tax credits will be considered. The seventy-five (75) calendar day deadlines are available on the Department's website.

(6) Resolutions Delivery Date. Resolutions required for Tax-Exempt Bond Developments or Direct Loan Applications must be submitted no later than fourteen (14) calendar days before the Board meeting at which consideration of the award will occur.

(7) Challenges to Neighborhood Organization Opposition Delivery Date. No later than forty-five (45) calendar days prior to the Board meeting at which consideration of the award will occur.

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 8, 2014.

TRD-201404300
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 19, 2014
For further information, please call: (512) 475-3959

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SUBCHAPTER B. SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS

10 TAC §10.101

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 10, Subchapter B, §10.101, concerning Site and Development Requirements and Restrictions. The purpose of the repeal is to allow for the replacement of the section with a new section that encompasses restrictions and requirements for all development sites for which applications are submitted in applying for multifamily funding through the Department. Proposed new §10.101 is published concurrently with this proposed repeal.

FISCAL NOTE. Timothy K. Irvine, Executive Director, 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.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also 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 repeal will be the replacement of the existing section with a new section that encompasses requirements for all applications applying for multifamily funding through the Department. There is no change in economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014, to October 20, 2014, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-0764. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed repeal affects Texas Government Code Chapter 2306, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The repeal affects no other statutes, articles or codes.

§10.101. 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 8, 2014.

TRD-201404301
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 19, 2014
For further information, please call: (512) 475-3959

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10 TAC §10.101

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Subchapter B, §10.101, concerning Site and Development Requirements and Restrictions. The purpose of the new section is to provide guidance relating to site and development requirements and restrictions for all development sites for which applications are submitted in applying for multifamily funding through the Department. The proposed repeal of existing §10.101 is published concurrently with this rulemaking.

FISCAL NOTE. Timothy K. Irvine, Executive Director, 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 new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be to provide guidance relating to site and development requirements and restrictions relating to applications applying for multifamily funding through the Department. The average cost of filing an application is between $15,000 and $30,000, 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.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new or additional economic effect on small or micro-businesses. The average cost of filing an application is between $15,000 and $30,000, 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.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014 to October 20, 2014, to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-0764, attn: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.

STATUTORY AUTHORITY. The new section is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the new section is proposed pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new section affects Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The new section affects no other statutes, articles or codes.

§10.101. 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. All Developments must be able to obtain flood insurance. New Construction or Reconstruction Developments located within a one-hundred (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. 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 local requirements they must also be met. 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 one-hundred (100) year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from the U.S. Department of Housing and Urban Development (HUD) or U.S. Department of Agriculture (USDA) are exempt from this requirement. However, where existing and ongoing federal assistance is not applicable such Rehabilita-

tion (excluding Reconstruction) Developments will be allowed in the one-hundred (100) year floodplain provided the state or 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.

(2) Mandatory Community Assets. Development Sites must be located within a one mile radius (two-mile radius for Developments located in a Rural Area) of at least six (6) community assets listed in subparagraphs (A) - (Y) of this paragraph. Supportive Housing Developments located in an Urban Area must be located within a one mile radius of at least one of the community assets listed in subparagraphs (T) - (Y) of this paragraph. Only one community asset of each type listed will count towards the number of assets required. A map must be included identifying the Development Site and the location of each of the community assets by name. All assets must exist or, if under construction, must be under active construction, post pad (e.g. framing the structure) by the date the Application is submitted:

(A) full service grocery store;

(B) pharmacy;

(C) convenience store/mini-market;

(D) department or retail merchandise store;

(E) bank/credit union;

(F) restaurant (including fast food, but not including establishments that are primarily bars and serve food as an incidental item);

(G) indoor public recreation facilities, such as, community centers and libraries accessible to the general public;

(H) outdoor public recreation facilities such as parks, golf courses, and swimming pools accessible to the general public;

(I) medical office (physician, dentistry, optometry) or hospital/medical clinic;

(J) public schools (only eligible for Developments that are not Qualified Elderly Developments);

(K) senior center accessible to the general public;

(L) religious institutions;

(M) community, civic or service organizations, such as Kiwanis or Rotary Club;

(N) child care center (must be licensed - only eligible for Developments that are not Qualified Elderly Developments);

(O) post office;

(P) city hall;

(Q) county courthouse;

(R) fire station;

(S) police station;

(T) designated public transportation stop at which public transportation (not including "on demand" transportation) stops on a regular, scheduled basis; a site's eligibility for on demand transportation or transportation provided directly or indirectly by the Development Owner do not meet this requirement;

(U) Centers for treatment of alcohol and/or drug dependency;

(V) Centers for treatment of PTSD and other significant psychiatric or psychological conditions;

(W) Centers providing therapeutic and/or rehabilitative services relating to mobility, sight, speech, cognitive, or hearing impairments;

(X) Clinics providing medical and/or psychological and/or psychiatric assistance for persons of limited financial means; or

(Y) Other assistive services designed to support the households in which one or more household members have disabilities.

(3) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (J) of this paragraph will be considered ineligible. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD or USDA may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application and must include a letter from the fair housing or civil rights office of the existing federal oversight entity indicating that the Rehabilitation of the existing units is consistent with the Fair Housing Act. The distances are to be measured from the nearest boundary of the Development Site to the undesirable feature. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (J) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A) Development Sites located within 300 feet of junkyards;

(B) Development Sites located within 100 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;

(C) Development Sites located within 500 feet of heavy industrial or dangerous uses such as manufacturing plants, fuel storage facilities, refinery blast zones, etc.;

(D) Development Sites located within 2 miles of potentially hazardous uses such as nuclear plants, large refineries (e.g. oil refineries producing more than 100,000 barrels of crude oil daily), or large oil field operations;

(E) Development Sites located within 300 feet of a solid waste or sanitary landfills;

(F) Development Sites in which the buildings are located within the easement of any overhead high voltage transmission line, support structures for high voltage transmission lines, radio antennae, satellite towers, or other similar structures. This does not apply to local service electric lines and poles;

(G) Development Sites in which the buildings are located within the accident zones or clear zones for commercial or military airports;

(H) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined as stated in Local Government Code, §243.002;

(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids, hazardous substances, acutely hazardous materials, or

hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to the Development Site or neighborhood; or

(J) 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 and which cannot be adequately mitigated.

(4) Undesirable Neighborhood Characteristics.

(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 to the Department. Disclosure of undesirable characteristics must be made at the time the Application is submitted to the Department. An Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department or after inducement (for Tax-Exempt Bond Developments) but must be accompanied by the Undesirable Neighborhood Characteristic Disclosure Fee pursuant to §10.901(21) of this chapter (relating to Fee Schedule). 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, the Application may be subject to termination. Termination due to non-disclosure may be appealed pursuant to §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). 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 which will include, where applicable, a review as described in subparagraph (C) of this paragraph. The assessment of the Development Site and neighborhood will be presented to the Board in a report, with a recommendation with respect to the eligibility of the Development Site. Should the Board uphold staff's recommendation or make a determination that a Development Site is ineligible based on staff's report, the termination of the Application resulting from such Board action is not subject to appeal. In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the use of Department funds at the Development Site must be consistent with achieving at least one of the goals in clauses (i) - (iii) of this subparagraph.

(i) Preservation of existing occupied affordable housing units that are subject to existing federal rent or income restrictions, that will not result in a further concentration of poverty and the Application includes a letter from the fair housing or civil rights office of the existing federal oversight entity indicating that the Rehabilitation of the existing units is consistent with the Fair Housing Act;

(ii) Improvement of housing opportunities for low income households and members of protected classes in areas that do not have high concentrations of existing affordable housing; or

(iii) Provision of affordable housing in areas where there has been significant recent community investment and evidence of new private sector investment; and

(iv) The Board may consider whether or not funding sources requested for the Development Site would otherwise be available for activities that would more closely align with the Department's and state's goals.

(B) The existence of any one of the three undesirable neighborhood characteristics in clauses (i) - (iii) of this subparagraph must be disclosed by the Applicant and will prompt further review as outlined in subparagraph (C) of this paragraph:

(i) The Development Site is located within a census tract that has a poverty rate above 35 percent for individuals (or 55 percent for Developments in regions 11 and 13).

(ii) The Development Site is located in a census tract that has a crime index of 40 or less, according to neighborhoodscout.com;

(iii) The Environmental Site Assessment for the Development Site indicates any facilities listings within the ASTM-required search distances from the approximate site boundaries on any one of the following databases:

(I) U.S. Environmental Protection Agency ("USEPA") National Priority List ("NPL"); Comprehensive Environmental Response, Compensation, and Liability Information System ("CERCLIS");

(II) Federal Engineering and/or Institutional Controls Registries ("EC"); Resource Conservation and Recovery Act ("RCRA") facilities associated with treatment, storage, and disposal of hazardous materials that are undergoing corrective action ("RCRA CORRACTS"); or

(III) RCRA Generators/Handlers of hazardous waste.

(C) Should any one of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, staff will conduct a further Development Site and neighborhood review which will include assessments of those items identified in clauses (i) - (viii) of this subparagraph.

(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 blight in the neighborhood, evidenced by boarded up or abandoned residential and/or commercial businesses and/or the visible physical decline of property or properties;

(iii) An assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;

(iv) An assessment concerning any of the features reflected in paragraph (3) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (3).

(v) An assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the neighborhood, including comment on concentration based on neighborhood size;

(vi) 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;

(vii) An assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy; and

(viii) An assessment of the number and/or strength of mitigating factors for otherwise undesirable neighborhood characteristics, including but not limited to community revitalization plans, demographic data that suggests increasing socio-economic diversity,

crime statistics evidencing trends that crime rates are decreasing, new construction in the area, and any other evidence of public and/or private investment in the neighborhood.

(D) During or after staff's review of the Development Site, the Department may request additional information from the Applicant. This information is not required to be submitted with the initial disclosure but must be made available at the Department's request. Information regarding mitigation of undesirable characteristics should be relevant to the undesirable characteristics that are present in the neighborhood. For instance, a plan to clean up an environmental hazard is an appropriate response to disclosure of a facility listed in the environmental site assessment, while a management plan and/or efforts of the local police department are appropriate to address issues of crime. Mitigation of undesirable characteristics should also include timelines that evidence a reasonable expectation that the issue(s) being addressed will be resolved or at least improved by the time the proposed Development is placed in service. Information likely to be requested may include but is not limited to those items in clauses (i) - (iv) of this subparagraph.

(i) Community revitalization plans (whether or not submitted for points under §11.9(d)(7) of this title);

(ii) Evidence of public and/or private plans to develop or redevelop in the neighborhood, whether residential or commercial;

(iii) Mitigation plans for any adverse environmental features; and/or

(iv) Statements from appropriate local elected officials regarding how the development will accomplish objectives in meeting obligations to affirmatively further fair housing and will address the goals set forth in the Analysis of Impediments and Consolidated Plan(s) of the local government and/or the state.

(b) Development Requirements and Restrictions. The purpose of this section is to identify specific restrictions on a proposed Development submitted for multifamily funding by the Department.

(1) Ineligible Developments. A Development shall be ineligible if any of the criteria in subparagraphs (A) and (B) of this paragraph are deemed to apply.

(A) General Ineligibility Criteria.

(i) Developments comprised of hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities which are usually classified as transient housing (as provided in the §42(i)(3)(B)(iii) and (iv) of the Code);

(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 violates §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 the one-for-one replacement of the existing unit mix. Adding additional units would not violate this provision.

(B) Ineligibility of Qualified Elderly Developments.

(i) Any Qualified Elderly Development of two stories or more that does not include elevator service for any Units or living space above the first floor;

(ii) Any Qualified 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 Qualified Elderly Development (including Qualified Elderly in a Rural Area) proposing more than 70 percent two-bedroom Units.

(2) Development Size Limitations. The minimum Development size is 16 Units. New Construction or Adaptive Reuse Developments in Rural Areas are limited to a maximum of 80 Units. Other 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. The following minimum Rehabilitation amounts must be maintained through the issuance of IRS Forms 8609 or at the time of the close-out documentation, as applicable:

(A) For Housing Tax Credit Developments under the USDA Set-Aside the minimum Rehabilitation will involve at least $19,000 per Unit in Building Costs and Site Work;

(B) For Tax-Exempt Bond Developments, less than twenty (20) years old, the minimum Rehabilitation will involve at least $15,000 per Unit in Building Costs and Site Work. If such Developments are greater than twenty (20) years old, the minimum Rehabilitation will involve at least $25,000 per Unit in Building Costs and Site Work;

(C) For all other Developments, the minimum Rehabilitation will involve at least $25,000 per Unit in Building Costs and Site Work; or

(D) Rehabilitation Developments financed with Direct Loans provided through the HOME program (or any other program subject to 24 CFR 92) that triggers the rehabilitation requirements of 24 CFR 92 will be required to meet all applicable state and local codes, ordinances, and standards; the 2012 International Existing Building Code ("IEBC"); and the requirements in clauses (i) - (iv) of this subparagraph.

(i) recommendations made in the Environmental Assessment and Physical Conditions Assessment with respect to health and safety issues, major systems (structural support; roofing; cladding and weatherproofing; plumbing; electrical; and heating, ventilation, and air conditioning), and lead based paint must be implemented;

(ii) all accessibility requirements pursuant to 10 TAC §1.206 (relating to Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973) and §1.209 (relating to Substantial Alteration of Multifamily Developments) must be met;

(iii) properties located in the designated catastrophe areas specified in 28 TAC §5.4008 must comply with 28 TAC §5.4011 (relating to Applicable Building Code Standards in Designated Catas-

trophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008); and

(iv) should IEBC be more restrictive than local codes, or should local codes not exist, then the Development must meet the requirements imposed by IEBC.

(4) Mandatory Development Amenities. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all of the amenities in subparagraphs (A) - (M) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (M) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), (I), or (M) of this paragraph; however, access must be provided to a comparable amenity in a common area. These amenities must be at no charge to the tenants. Tenants must be provided written notice of the elections made by the Development Owner.

(A) All Units must be wired with RG-6/U COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;

(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 rated dishwasher (not required for USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);

(F) Energy-Star rated refrigerator;

(G) Oven/Range;

(H) Blinds or window coverings for all windows;

(I) At least one Energy-Star rated ceiling fan per Unit;

(J) Energy-Star rated lighting in all Units which may include compact fluorescent or LED light bulbs;

(K) Plumbing fixtures (toilets and faucets) must meet design standards at 30 TAC §290.252 (relating to Design Standards);

(L) All Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units only); and

(M) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half (1.5) spaces per Unit for non-Qualified Elderly Developments and one (1) space per Unit for Qualified Elderly Developments. The minimum number of required spaces must be available to the tenants at no cost.

(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. For Developments with 41 Units or more, at least two (2) of the required threshold points must come from subparagraph (C)(xxxi) of this paragraph.

(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 tenants and made available throughout normal business hours and maintained throughout the Compliance Period. Tenants must be provided written notice of the elections made by the Development Owner. If fees 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 accessibility standards and spaces for activities must be sized appropriately to serve the proposed Target Population. 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.

(C) The common amenities and respective point values are set out in clauses (i) - (xxxi) of this subparagraph. Some amenities may be restricted for Applicants proposing a specific Target Population. 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) Full perimeter fencing (2 points);

(ii) Controlled gate access (2 points);

(iii) Gazebo w/sitting area (1 point);

(iv) Accessible walking/jogging path separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);

(v) Community laundry room with at least one washer and dryer for every 40 Units (3 points);

(vi) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point);

(vii) Covered pavilion that includes barbecue grills and tables with at least one grill and table for every 50 Units (2 points);

(viii) Swimming pool (3 points);

(ix) Splash pad/water feature play area (1 point);

(x) Furnished fitness center. Equipped with fitness equipment options with at least one option per every 40 Units or partial increment of 40 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, sauna, stair-climber, or other similar equipment. Equipment shall be commercial use grade or quality. All Developments must have at least two equipment options but are not required to have more than five equipment options regardless of number of Units (2 points);

(xi) Equipped and functioning business center or equipped computer learning center. Must be equipped with 1 computer for every 30 Units loaded with basic programs, 1 laser printer for every 3 computers (minimum of one printer) and at least one scanner which may be integrated with printer (2 points);

(xii) Furnished Community room (2 points);

(xiii) Library with an accessible sitting area (separate from the community room) (1 point);

(xiv) Enclosed community sun porch or covered community porch/patio (1 point);

(xv) Service coordinator office in addition to leasing offices (1 point);

(xvi) Senior Activity Room stocked with supplies (Arts and Crafts, etc.) (2 points);

(xvii) Health Screening Room (1 point);

(xviii) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);

(xix) Horseshoe pit; putting green; shuffleboard court; video game console(s) with a variety of games and a dedicated location accessible to all tenants to play such games (1 point);

(xx) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);

(xxi) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot (1 point). Can only select this item if clause (xxii) of this subparagraph is not selected; or

(xxii) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (2 points). Can only select this item if clause (xxi) of this subparagraph is not selected;

(xxiii) Sport Court (Tennis, Basketball or Volleyball) (2 points);

(xxiv) Furnished and staffed Children's Activity Center that must have age appropriate furnishings and equipment. Appropriate levels of staffing must be provided during after-school hours and during school vacations (3 points);

(xxv) Community Theater Room equipped with a 52 inch or larger screen with surround sound equipment; DVD player; and theater seating (3 points);

(xxvi) Dog Park area that is fully enclosed and intended for tenant owned dogs to run off leash or a dog wash station with plumbing for hot and cold water connections and tub drainage (requires that the Development allow dogs) (1 point);

(xxvii) Common area Wi-Fi (1 point);

(xxviii) Twenty-four hour live monitored camera/security system in each building (3 points);

(xxix) Secured bicycle parking (1 point);

(xxx) Rooftop viewing deck (2 points); or

(xxxi) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Points may be selected from only one of four categories: Limited Green Amenities, Enterprise Green Communities, Leadership in Energy and Environmental Design (LEED), and National Green Building Standard (NAHB) Green. A Development may qualify for no more than four (4) points total under this clause.

(I) Limited Green Amenities (2 points). The items listed in subclauses (I) - (IV) of this clause constitute the minimum requirements for demonstrating green building of multifamily Developments. Six (6) of the nine (9) items listed under items (-a-) - (-l-) of this subclause must be met in order to qualify for the maximum number of two (2) points under this subclause;

(-a-) a rain water harvesting/collection system and/or locally approved greywater collection system;

(-b-) native trees and plants installed that reduce irrigation requirements and are appropriate to the Development Site's soil and microclimate to allow for shading in the summer and heat gain in the winter;

(-c-) water-conserving fixtures that meet the EPA's WaterSense Label. Such fixtures must include low-flow or high efficiency toilets, bathroom lavatory faucets, showerheads, and kitchen faucets. Rehabilitation Developments may install compliant faucet aerators instead of replacing the entire faucets;

(-d-) all of the HVAC condenser units located so they are fully shaded 75 percent of the time during summer months (i.e. May through August) as certified by the design team at cost certification;

(-e-) Energy-Star qualified hot water heaters or install those that are part of an overall Energy-Star efficient system;

(-f-) install individual or sub-metered utility meters. Rehabilitation Developments may claim sub-meter only if not already sub-metered at the time of Application;

(-g-) healthy finish materials including the use of paints, stains, adhesives, and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standard;

(-h-) install daylight sensor, motion sensors or timers on all exterior lighting and install fixtures that include automatic switching on timers or photocell controls for all lighting not intended for 24-hour operation or required for security;

(-i-) recycling service provided throughout the Compliance Period;

(-j-) for Rehabilitation Developments or Developments with 41 units or less, construction waste management system provided by contractor that meets LEEDs minimum standards;

(-k-) for Rehabilitation Developments or Developments with 41 units or less, clothes dryers vented to the outside;

(-l-) for Developments with 41 units or less, at least 25% by cost FSC certified salvaged wood products.

(II) Enterprise Green Communities (4 points). 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.

(III) LEED (4 points). 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).

(IV) National Green Building Standard (NAHB Green) (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NAHB Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(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 and Development 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 seven (7) points. Applications not funded with Housing Tax Credits (e.g. Direct Loan Applications) 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 Compliance 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 three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(i) Covered entries (0.5 point);

(ii) Nine foot ceilings in living room and all bedrooms (at minimum) (0.5 point);

(iii) Microwave ovens (0.5 point);

(iv) Self-cleaning or continuous cleaning ovens (0.5 point);

(v) Refrigerator with icemaker (0.5 point);

(vi) 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);

(vii) Energy-Star qualified laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (1.5 points);

(viii) Covered patios or covered balconies (0.5 point);

(ix) Covered parking (including garages) of at least one covered space per Unit (1.5 points);

(x) R-15 Walls/R-30 Ceilings (rating of wall/ceiling system) (1.5 points);

(xi) 14 SEER HVAC (or greater) for New Construction, Adaptive Reuse, and Reconstruction or radiant barrier in the attic for Rehabilitation (excluding Reconstruction) (1.5 points);

(xii) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point); and

(xiii) Desk or computer nook (0.5 point).

(7) Tenant Supportive Services. The supportive services include those listed in subparagraphs (A) - (T) of this paragraph. Tax Exempt Bond Developments must select a minimum of eight (8) points; Applications not funded with Housing Tax Credits (e.g. HOME Program or other Direct Loans) must include enough services to meet a minimum of four (4) 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 chapter (relating to Monitoring for Social Services) and maintained throughout the Compliance Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. Tenants must be provided written notice of the elections made by the Development Owner. No fees may be charged to the tenants for any of the services and there must be adequate space for the intended 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.

(A) joint use library center, as evidenced by a written agreement with the local school district (2 points);

(B) weekday character building program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics, for example teen dating violence, drug prevention, teambuilding, internet dangers, stranger danger, etc.) (2 points);

(C) daily transportation such as bus passes, cab vouchers, specialized van on-site (4 points);

(D) Food pantry/common household items accessible to residents at least on a monthly basis (1 point);

(E) GED preparation classes (shall include an instructor providing on-site coursework and exam) (1 point);

(F) English as a second language classes (shall include an instructor providing on-site coursework and exam) (1 point);

(G) quarterly financial planning courses (i.e. homebuyer education, credit counseling, investing advice, retirement plans, etc.). Courses must be offered through an on-site instructor; a CD-ROM or online course is not acceptable (1 point);

(H) annual health fair (1 point);

(I) quarterly health and nutritional courses (1 point);

(J) organized youth programs offered by the Development (1 point);

(K) scholastic tutoring (shall include weekday homework help or other focus on academics) (3 points);

(L) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);

(M) weekly exercise classes (2 points);

(N) twice monthly arts, crafts, and other recreational activities such as Book Clubs and creative writing classes (2 points);

(O) annual income tax preparation (offered by an income tax prep service) (1 point);

(P) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point);

(Q) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, etc.) (1 point);

(R) specific case management services offered through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (1 point);

(S) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for seniors and Persons with Disabilities (2 points);

(T) 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);

(U) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; also 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);

(V) external partnerships for provision of weekly AA or NA meetings at the Development Site (2 points);

(W) contracted onsite occupational or physical therapy services for seniors and Persons with Disabilities (2 points);

(X) a full-time resident services coordinator with a dedicated office space at the development (2 points); and

(Y) a resident-run pea patch or community garden (1 point).

(8) Development Accessibility Requirements. All Developments must meet all specifications and accessibility requirements as identified in subparagraphs (A) - (C) 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 §504, Rehabilitation Act of 1973 (29 U.S.C. §794), as specified under 24 C.F.R. Part 8, Subpart C, and as further defined in Chapter 1, Subchapter B of this title (relating to Accessibility Requirements).

(B) New Construction (excluding New Construction of non-residential buildings) Developments where some Units are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each unit type of otherwise exempt units (i.e., one bedroom one bath, two bedroom one bath, two bedroom two bath, three bedroom two bath) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level.

(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, the Code Requirements for Housing Accessibility 2000 (or as amended from time to time) produced by the International Code Council 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 §1.205 of this title.

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

Filed with the Office of the Secretary of State on September 8, 2014.

TRD-201404302
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 19, 2014
For further information, please call: (512) 475-3959

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SUBCHAPTER C. APPLICATION SUBMISSION REQUIREMENTS, INELIGIBILITY CRITERIA, BOARD DECISIONS AND WAIVER OF RULES OR PRE-CLEARANCE FOR APPLICATIONS

10 TAC §§10.201 - 10.207

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department" proposes the repeal of 10 TAC Chapter 10, Subchapter C, §§10.201 - 10.207, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules. The purpose of the repeal is to allow for the replacement of the existing sections with new sections that encompass requirements for all applications applying for multifamily funding through the Department. Proposed new §§10.201 - 10.207 are being published concurrently with this rulemaking.

FISCAL NOTE. Timothy K. Irvine, Executive Director, 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.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also 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 repeal will be the replacement of the sections with new sections that encompass requirements for all applications applying for multifamily funding through the Department. There is no new or additional economic cost to any persons required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014, to October 20, 2014, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-0764. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed repeal affects Texas Government Code Chapter 2306, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The repeal affects no other statutes, articles or codes.

§10.201. Procedural Requirements for Application Submission.

§10.202. Ineligible Applicants and Applications.

§10.203. Public Notifications.

§10.204. Required Documentation for Application Submission.

§10.205. Required Third Party Reports.

§10.206. Board Decisions.

§10.207. Waiver of Rules or Pre-Clearance for 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 8, 2014.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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SUBCHAPTER C. APPLICATION SUBMISSION REQUIREMENTS, INELIGIBILITY CRITERIA, BOARD DECISIONS AND WAIVER OF RULES FOR APPLICATIONS

10 TAC §§10.201 - 10.207

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Subchapter C, §§10.201 - 10.207. The purpose of the proposed new rules is to provide guidance for application submission, define what would cause an applicant and application to be ineligible for consideration of multifamily funding, and explain processes regarding Board decisions. The proposed repeal of existing Subchapter C is published concurrently with this rulemaking.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also 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 to provide additional clarity regarding requirements for application submission, define ineligible applicants and applications, and explain processes regarding Board decisions. The average cost of filing an application is between $15,000 and $30,000, 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.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new or additional economic effect on small or micro-businesses. The average cost of filing an application is between $15,000 and $30,000, 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.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014, to October 20, 2014, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Pam Cloyde; by email to pcloyde@tdhca.state.tx.us; or by FAX to (512) 475-4420. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. ON OCTOBER 20, 2014.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The new sections affect no other statutes, articles or codes.

§10.201. Procedural Requirements for Application Submission.

The purpose of this section is to identify 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. Applicants are subject to the schedule of fees as set forth in §10.901 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 §10.901 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.

(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 an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Applicants should ensure that all documents are legible, properly organized and tabbed, and that digital media is fully readable by the Department. Department staff receiving an application may perform a cursory review to see if there are any glaring problems. This is a cursory review and may not be relied upon as confirmation that the Application was complete or in proper form.

(C) The Applicant must deliver one (1) CD-R containing a PDF copy and Excel copy of the complete Application to the Department. Each copy must be in a single file and individually bookmarked in the order required by the Multifamily Programs Procedures Manual. Additional files required for Application submission (e.g., Third Party Reports) outside the Uniform Application may be included on the same CD-R or a separate CD-R as the Applicant sees fit.

(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 may be submitted to the Department as described in subparagraphs (A) and (B) of this paragraph. Multiple site applications for Tax-Exempt Bond Developments will be considered to be one Application as identified in Texas Government Code, Chapter 1372. Applications will be required to satisfy the requirements of the Qualified Allocation Plan (QAP) and Uniform Multifamily Rules in place at the time the Application is received by the Department. Applications that receive a Traditional Carryforward designation after November 15 will not be accepted until after January 2 and will be subject to the QAP and Uniform Multifamily Rules in place at the time the Application is received by the Department.

(A) Lottery Applications. For Applicants participating in the TBRB lottery for private activity bond volume cap and whereby 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 §10.4 of this chapter (relating to Program Dates). The complete Application, accompanied by the Application Fee described in §10.901 of this chapter must be submitted no later than the Applications Associated with Lottery Delivery Date described in §10.4 of this chapter.

(B) Waiting List Applications. 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 Parts 1 - 4 of the Application and the Application Fee described in §10.901 of this chapter prior to the issuance of the Certificate of Reservation by the TBRB. The remaining parts of the Application must be submitted at least seventy-five (75) days prior to the Board meeting at which the decision to issue a Determination Notice would be made. An Application designated as Priority 3 will not be accepted until after the issuer has induced the bonds and is subject to the following additional timeframes:

(i) The Applicant must submit to the Department confirmation that a Certificate of Reservation from the TBRB has been issued not more than thirty (30) days after the Application is received by the Department. The Executive Director may, for good cause, approve an extension for up to an additional fifteen (15) days to submit confirmation the Certificate of Reservation has been issued. The Application will be terminated if the Certificate of Reservation is not received within the required timeframe;

(ii) The Department will require at least seventy-five (75) days to review an Application, unless Department staff can complete its evaluation in sufficient time for 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;

(iii) Department staff may choose to delay presentation to the Board in instances in which an Applicant is not reasonably expected to close within sixty (60) days of the issuance of a 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, which means that at a minimum, the following cannot have changed: 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) or 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. Notifications under §10.203 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 thirty (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 (4) 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. An Applicant may be subject to a fee associated with a withdrawal if warranted and allowable under §10.901 of this chapter.

(5) Evaluation Process. Priority Applications, which shall include those 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 prioritized based upon the likelihood that an Application will be competitive for an award based upon the 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's priority, 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. Applications deemed to be priority Applications may change from time to time. The Department 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 §10.302 of this chapter (relating to Underwriting Rules and Guidelines) and §10.307 of this chapter (relating to Direct Loan Requirements). The Department may have an external party perform all or part or none of the underwriting evaluation 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. Applications will undergo a previous participation review in accordance with §1.5 of this title (relating to Previous Participation Reviews) and Development Site conditions may be evaluated through a physical site inspection by the Department or its agents.

(6) Prioritization of Applications under various Programs. This paragraph identifies how ties or other prioritization matters will be handled when dealing with de-concentration requirements, capture rate calculations, and general review priority 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; and

(ii) For all other Developments, the date the Application is received by the Department; and

(iii) Notwithstanding the foregoing, after July 31, 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. Review priority for 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. In general, 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 will take longer to process due to the statutory constraints on the award and allocation of competitive tax credits.

(7) Administrative Deficiency Process. The purpose of the Administrative Deficiency process is to allow staff to request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. The review may occur in several phases and deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail, or if an e-mail address is not provided in the Application, by facsimile to the Applicant and one other contact party if identified by the Applicant in the Application. 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 that they in fact implicated matters of a material nature not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an Administrative Deficiency response has been received or that such response is satisfactory. 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 an Administrative 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) Administrative Deficiencies for Competitive HTC Applications. Unless an extension has been timely requested and granted, if an Administrative Deficiency is not 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 (5 points) shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not resolved by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. 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 Ad-

ministrative Deficiency. (§2306.6708(b); §2306.6708) To the extent that the review of Administrative Deficiency documentation alters the score assigned to the Application, Applicants will be re-notified of their final adjusted score.

(B) Administrative Deficiencies for all other Applications or sources of funds. If Administrative Deficiencies are not 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 an Administrative Deficiency Notice Late Fee of $500 for each business day the deficiency remains unresolved will be assessed, and the Application will not be presented to the Board for consideration until all outstanding fees have been paid. Applications with unresolved deficiencies after 5:00 p.m. on the tenth day following the date of the deficiency notice may be terminated. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination. Department staff may or may not assess an Administrative Deficiency Notice Late Fee for or terminate Applications for Tax-Exempt Bond or Direct Loan Developments during periods when private activity bond volume cap or Direct Loan funds are undersubscribed. Applicants should be prepared for additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section.

(8) Limited Priority Reviews. If, after the submission of the Application, an Applicant identifies an error in the Application that would generally be the subject of an Administrative Deficiency, the Applicant may request a limited priority 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 priority review may only cover the specific issue and not the entire Application. If the limited priority review results in the identification of an issue that does indeed need correction or clarification, staff will request such through the Administrative Deficiency process as stated in paragraph (7) of this section, if deemed appropriate. A limited priority 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 for Tax-Exempt Bond Developments. 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 §10.4 of this chapter. The Neighborhood Organization expressing opposition will be given seven (7) 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.

§10.202. 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. If such ineligibility is determined by staff to exist, then prior to termination the Department may send a notice to the Applicant and provide them the opportunity to explain how they believe they or their Application is eligible. The items listed in this section include those requirements in §42 of the Code, Texas Government 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 or a NOFA specific to the programmatic funding.

(1) Applicants. An Applicant shall be considered ineligible if any of the criteria in subparagraphs (A) - (N) of this paragraph apply to the Applicant. If any of the criteria apply to any other member of the Development Team, the Applicant will also be deemed ineligible unless a substitution of that Development Team member is specifically allowable under the Department's rules and sought by the Applicant or appropriate corrective action has been accepted and approved by the Department. An Applicant is ineligible if the Applicant:

(A) has been or is barred, suspended, or terminated from procurement in a state or Federal program or 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 fifteen (15) years preceding the Application submission;

(C) is, at the time of Application, subject to an enforcement or disciplinary action under state or federal securities law or by the NASD; subject to a federal tax lien; 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 breached a contract with a public agency, 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 because of material uncured noncompliance reflected in the Applicant's compliance history to the extent and where allowed by law or as assessed in accordance with §1.5 of this title (relating to Previous Participation Reviews);

(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;

(H) has failed to cure any past due fees owed to the Department at least ten (10) days prior to the Board meeting at which the decision for an award is to be made;

(I) is in violation of a state revolving door or other standard of conduct or conflict of interest statute, including Texas Government Code, §2306.6733, or a provision of Texas Government Code, Chapter 572, in making, advancing, or supporting the Application;

(J) has previous contracts or commitments that have been partially or fully deobligated during the twelve (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 Party is on notice that such deobligation results in ineligibility under this chapter;

(K) has provided fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation or omission in an Application or Commitment, as part of a challenge to another Application or any other information provided to the Department for any reason. The conduct described in this subparagraph is also a violation of this chapter and will subject the Applicant to the assessment of administrative penalties under Texas Government Code, Chapter 2306 and this title;

(L) was the owner or Affiliate of the owner of a Department HOME-assisted rental development for which the federal affordability requirements were prematurely terminated and the affordability requirements have not re-affirmed or HOME 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, voluntarily or involuntarily, that has terminated within the past ten (10) years or plans to or is negotiating to terminate their relationship with any other affordable housing development. Failure to disclose is grounds for termination. 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 terminated based upon factors in the disclosure. If, not later than thirty (30) days after the date on which the Applicant has made full disclosure, including providing information responsive to any supplemental Department staff requests, the Executive Director makes an initial determination that the person or persons should not be involved in the Application, that initial determination shall be brought to the Board for a hearing and final determination. If the Executive Director has not made and issued such an initial determination on or before the day thirty (30) days after the date on which the Applicant has made full disclosure, including providing information responsive to any supplemental Department staff requests, the person or persons made the subject of the disclosure shall be presumptively fit to proceed in their current role or roles. Such presumption in no way affects or limits the ability of the Department staff to initiate debarment proceedings under the Department's debarment rules at a future time if it finds that facts and circumstances warranting debarment exist. In the Executive Director's making an initial determination or the Board's making a final determination as to a person's fitness to be involved as a principal with respect to an Application, the factors described in clauses (i) - (v) of this subparagraph shall be considered:

(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 propose 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) is found to have participated in the dissemination of misinformation about affordable housing and the persons it serves that would likely have the effect of fomenting opposition to an Application where such opposition is not based in substantive and legitimate concerns that do not implicate potential violations of fair housing laws. Nothing herein shall be construed or effectuated in a manner to deprive a person of their right of free speech, but it is a requirement of those who voluntarily choose to participate in this program that they refrain from participating in the above-described inappropriate behaviors. Applicants may inform Department staff about activities potentially prohibited by this provision outside of the challenge process described in §11.10 of this title (relating to Challenges of Competitive HTC Applications). An Applicant submitting documentation of a potential violation may not appeal any decision that is made with regard to another competing Applicant's application.

(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 Texas Government 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 Texas Government 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. An attempted but unsuccessful prohibited ex parte communication, such as a letter sent to one or more board members but not opened, may be cured by full disclosure in a public meeting, and the Board may reinstate the Application and establish appropriate consequences for cured actions, such as denial of the matters made the subject to the communication.

(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 member of the Board or employed by the Department as the Executive Director, Chief of Staff, General Counsel, a Deputy Executive Director, the Director of Multifamily Finance, the Chief of Compliance, the Director of Real Estate Analysis, a manager over the program for which an Application has been submitted, or any person exercising such responsibilities regardless of job title; or (§2306.6703(a)(1))

(ii) the Applicant proposes to replace in less than fifteen (15) years any private activity bond financing of the Development described by the Application, unless the exceptions in §2306.6703(a)(2) of the Texas Government Code are met.

§10.203. 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 (3) months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments notifications and proof thereof must not be older than three (3) months prior to the date Parts 5 and 6 of the Application are submitted, and for all other Applications no older than three (3) months prior to the date the Application is submitted. If evidence of these notifications was submitted with the pre-application (if applicable to the program) for the same Application and satisfied the Department's review of the pre-application threshold, then no additional notification is required at Application. However, re-notification is required by all Applicants who have submitted a change in the Application, whether from pre-application to Application or as a result of an Administrative Deficiency that reflects a total Unit increase of greater than 10 percent or a 5 percent change in density (calculated as units per acre) as a result of a change in the size of the Development Site. In addition, should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official.

(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 date the Full Application Delivery Date whose boundaries include the proposed Development Site.

(B) The Applicant must list, in the certification form provided in the Application, all Neighborhood Organizations on record with the county or state as of 30 days prior to the Full Application Delivery Date whose boundaries include the proposed Development Site as of the submission of the Application.

(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 in the format required 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 encouraged 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 officials in office at the time the Application is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

(A) Neighborhood Organizations on record with the state or county as of 30 days prior to the Full Application Delivery Date whose boundaries include the 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) - (vi) 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, townhomes, high-rise etc.); and

(vi) the total number of Units proposed and total number of low-income Units proposed.

(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 serve the elderly unless 100 percent of the Units will be for Qualified Elderly, and it may not imply or indicate that it will target or prefer any subpopulation unless such targeting or preference is in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

§10.204. Required Documentation for Application Submission.

The purpose of this section is to identify the documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. If any of the documentation indicated in this section is not resolved, clarified or corrected to the satisfaction of the Department through either original Application submission or the Administrative Deficiency process, the Application will be terminated. 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. 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.

(1) Certification of Development Owner. This form, as provided in the Application, must be executed by the Development

Owner and address 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, that they have given it with all required authority and with actual knowledge of the matters certified. Applicants must read the certification carefully as it contains certain construction and Development specifications that each Development must meet.

(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 Texas Government Code, Chapter 552, and the Texas Public Information Act.

(C) All representations, undertakings and commitments made by Applicant in the Application process for Development assistance 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 each and all 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 tenants of the Development, including enforcement by administrative penalties for failure to perform, 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 percent of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Texas Government Code, §2306.6734.

(G) The Development Owner will affirmatively market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will affirmatively 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.

(2) Certification of Principal. This form, as provided in the Application, must be executed by all Principals and identifies the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §10.202 of this chapter (relating to Ineligible Applicants and Applications).

(3) Architect Certification Form. This form, as provided in the Application, must be executed by the Development engineer, an accredited architect or Department-approved Third Party accessibility specialist. (§2306.6722 and §2306.6730)

(4) Notice, Hearing, and Resolution for Tax-Exempt Bond Developments. In accordance with Texas Government 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 §10.203 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, 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 extraterritorial jurisdiction (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 §10.4 of this chapter (relating to Program Dates). 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 Application may be terminated. The resolution(s) must certify that:

(i) Notice has been provided to the Governing Body in accordance with Texas Government Code, §2306.67071(a) and subparagraph (A) of this paragraph;

(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 Texas Government Code, §2306.67071(b) and subparagraph (B) of this paragraph; 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. 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 Texas Government 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.

(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 2014 which may be submitted as acceptable evidence of this requirement. Experience of multiple parties may not be aggregated to meet this requirement.

(A) A Principal of the Developer, Development Owner, or General Partner must establish that they have experience in the development and placement in service of 150 units or more. 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) Experience may not be established for a Person who at any time within the preceding three years has been involved with affordable housing in another state in which the Person or Affiliate has been the subject of issued IRS Form 8823 citing non-compliance that has not been or is not being corrected with reasonable due diligence.

(D) If a Principal is determined by the Department to not have the required experience, an acceptable replacement for that Principal must be identified prior to the date the award is made by the Board.

(E) 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 pursuant to this chapter or elected in accordance with Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be imposed by the LURA and monitored for compliance. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) and (ii) 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 covered by a lender's policy of title insurance;

(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money must:

(I) have been signed by the lender;

(II) be addressed to the Development Owner or Affiliate;

(III) for the permanent loan, include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization;

(IV) include anticipated interest rate, including the mechanism for determining the interest rate;

(V) include any required Guarantors, if known;

(VI) include the principal amount of the loan; and

(VII) include and address any other 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; or

(iii) For Developments proposing to refinance an existing USDA Section 515 loan, a letter from the USDA confirming receipt of the loan transfer application.

(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified 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. Permanent loans must include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization or for non-amortizing loan structures a term of not less than thirty (30) years.

(C) Owner Contributions. If the Development will be financed in part by a capital contribution by the General Partner, Managing General Partner, any other partner that is not a partner providing the syndication equity, a guarantor or a Principal in an amount that exceeds 5 percent 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 repository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds remain readily available at Commitment. Regardless of the amount, all capital contributions other than syndication equity will be added to the Deferred Developer Fee for feasibility purposes under §10.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless 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 history of fundraising 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) anticipated developer fees paid during construction; and

(v) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis.

(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes the complete financing plan for the Development, including but not limited to, the sources and uses of funds; construction, permanent and bridge loans, rents, operating subsidies, and replacement reserves; and the status of commitments for all funding sources. For applicants requesting HOME funds, Match in the amount of at least 5 percent of the HOME funds requested 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 HOME funds. The information provided must be consistent with all other documentation in the Application.

(8) Operating and Development Cost Documentation.

(A) 15-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 chapter (relating to Utility Allowances). Where the Applicant uses any method that requires Department review, such review must have been requested prior to submission of 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 be identified. "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. 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 HOME funds, at least 90 percent of the Units restricted in connection with the HOME program must be available to families whose incomes do not exceed 60 percent of the Area Median Income.

(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 the 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 rele-

vant 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 current property owner is unwilling to provide the required documentation then a signed statement from the Applicant attesting to that fact must be submitted. 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 twelve (12) consecutive months ending not more than three (3) months from the first day of the Application Acceptance Period;

(II) the two (2) most recent consecutive annual operating statement summaries;

(III) the most recent consecutive six (6) 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 (6) 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 tenant names or vacancy;

(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 the appropriate legal or governmental agency. (§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) A site plan which:

(i) includes a unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application;

(ii) identifies all residential and common buildings;

(iii) clearly delineates the flood plain boundary lines and shows all easements;

(iv) if applicable, indicates possible placement of detention/retention pond(s); and

(v) indicates the location of the parking spaces;

(B) Building floor plans must be submitted for each building type. Applications for Rehabilitation (excluding Reconstruction) are not required to submit building floor plans unless the floor plan changes. Applications for Adaptive Reuse are only required to include building plans delineating each Unit by number and type. Building floor plans must 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. Applications for Adaptive Reuse are only required to include Unit floor plans for each distinct typical Unit type such as one-bedroom, two-bedroom and for all Unit types that vary in Net Rentable Area by 10 percent from the typical Unit; and

(D) Elevations must be submitted for each building type 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 does not expressly preclude an ability to assign the Site Control to the Development Owner or another party. All of the sellers of the proposed Property for the thirty-six (36) months 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 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 use a reasonableness standard in determining whether such encumbrance is likely to impede an Applicant's ability to meet the program's requirements. 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 with corresponding executed settlement statement (or functional equivalent for an existing lease with at least forty-five (45) years remaining); or

(ii) a contract or option for lease with a minimum term of forty-five (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 §10.302 of this chapter, then the documentation as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.

(11) Zoning. (§2306.6705(5)) Acceptable evidence of zoning for all Developments must include one of subparagraphs (A) - (D) of this paragraph.

(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.

(B) Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating the Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development.

(C) Requesting a Zoning Change. 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 is in the process of seeking a zoning change, that a zoning application was received by the political subdivision, and that the jurisdiction received a release agreeing to hold the political subdivision and all other parties harmless in the event the appropriate zoning is denied. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice.

(D) Zoning for Rehabilitation Developments. 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) - (iv) of this subparagraph:

(i) a detailed narrative of the nature of non-conformance;

(ii) the applicable destruction threshold;

(iii) Owner's rights to reconstruct in the event of damage; and

(iv) 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 (6) months prior to the beginning of the Application Acceptance Period, 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 lists 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.

(A) Organizational Charts. A chart must be submitted that clearly illustrates the complete organizational structure of the final proposed Development Owner and of any Developer or Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner or the Developer or Guarantor, as applicable, whether directly or through one or more subsidiaries. Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors 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.

(B) Previous Participation. Evidence must be submitted that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, has provided a copy of the completed and executed Previous Participation and Background Certification Form to the Department. Nonprofit entities, public housing authorities, other government instrumentalities and publicly traded corporations are required to submit documentation for the entities involved, individual board members, and executive directors. Any Person (regardless of any Ownership interest or lack thereof) receiving more than 10 percent of the Developer fee is also required to submit this document. The form 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 Previous Participation and Background Certification Form will authorize the parties overseeing such assistance to release compliance histories to the Department.

(14) Nonprofit Ownership. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner shall submit the documentation identified in subparagraph (A) or (B) of this paragraph as applicable.

(A) Competitive HTC Applications. 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 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 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 is a §501(c)(3) or (4) entity;

(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 §42(h)(5) of the Code 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;

(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;

(iv) a copy of the nonprofit organization's most recent financial statement as prepared by a Certified Public Accountant; and

(v) evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:

(I) in this state, if the Development is located in a Rural Area; or

(II) not more than ninety (90) miles from the Development, if the Development is not located in a Rural Area.

(B) All Other Applications. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner must submit an IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity and the Nonprofit Participation exhibit as provided in the Application. If the Application involves a nonprofit that is not a §501(c)(3) or (4), then they must disclose in the Application the basis of their nonprofit status.

§10.205. Required Third Party Reports.

The Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), Market Analysis, and the Site Design and Development Feasibility Report must be submitted no later than the Third Party Report Delivery Date as identified in §10.4 of this chapter (relating to Program Dates). For Competitive HTC Applications, the Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), the Site Design and Development Feasibility Report, and the Primary Market Area map (with definition based on census tracts, zip codes or census place in electronic format) must be submitted no later than the Full Application Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) and the Market Analysis must be submitted no later than the Market Analysis Delivery Date as identified in §11.2 of this title. 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 §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines), must not be dated more than twelve (12) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded, then a letter or updated report must be submitted, dated not more than three (3) months prior to the first day of the Application Acceptance Period 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) 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 those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations, then evidence indicating 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 §10.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If the report is older than six (6) months, but not more than twelve (12) months prior to the first day of the Application Acceptance Period, 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 (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original Market Analysis.

(A) The report must be prepared by a Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §10.303 of this chapter.

(B) Applications in the USDA Set-Aside proposing Rehabilitation with residential structures at or above 80 percent occupancy at the time of Application submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §10.304 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) Property Condition Assessment (PCA). This report, required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Developments and prepared in accordance with the requirements of §10.306 of this chapter (relating to Property Condition Assessment Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If the report is older than six (6) months, but not more than twelve (12) months prior to the first day of the Application Acceptance Period, the report provider may provide a statement that reaffirms the findings of the original PCA. The statement may not be dated more than six (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original PCA. For Developments which require a capital needs assessment from USDA the capital needs assessment may be substituted and may be more than six (6) 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

§10.306 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.

(4) Appraisal. This report, required for all Rehabilitation Developments and prepared in accordance with the requirements of §10.304 of this chapter, 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 (6) months prior to the first day of the Application Acceptance Period. For Developments that require an appraisal from USDA, the appraisal may be more than six (6) months old, as long as USDA has confirmed in writing that the existing appraisal is still acceptable.

(5) Site Design and Development 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 for any New Construction or Reconstruction Development.

(A) Executive Summary as 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. The summary 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). Additionally, the overview should contain a summary of zoning requirements, subdivision requirements, property identification number(s) and millage rates for all taxing jurisdictions, development ordinances, fire department requirements, site ingress and egress requirements, building codes, and local design requirements impacting the Development (include website links but do not attach copies of ordinances). Careful focus and attention should be made regarding any atypical items materially impacting costs.

(B) Survey or current plat 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 twelve (12) months from the beginning of the Application Acceptance Period. Plats must include evidence from an appropriate local official that, as of the date of submission, it is the most current plat. Applications proposing noncontiguous single family scattered sites are not required to submit surveys or plats at Application, but this information may be requested during the Real Estate Analysis review.

(C) 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 (include handicap spaces and ramps) 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.

(D) 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.

§10.206. 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 and the Board's evaluation of the proposed Developments' consistency with, and fulfillment of, the criteria and requirements set forth in this chapter, Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) and other applicable Department rules. 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.

§10.207. Waiver of Rules for Applications.

(a) General Waiver Process. This waiver section is applicable only to Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions), Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules or Pre-clearance for Applications), Subchapter E of this chapter (relating to Post Award and Asset Management Requirements), and Subchapter G of this chapter (relating to Fee Schedule, Appeals, and Other Provisions), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), and Chapter 12 of this title (relating to Multifamily Housing Revenue Bond 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 will not be accepted between submission of the Application and any award for the Application. Where appropriate, the Applicant is encouraged to 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. Waiver requests that are limited to Development design and construction elements not specifically required in Texas Government Code, Chapter 2306 must meet the requirements of paragraph (1) of this subsection. All other waiver requests must meet the requirements of paragraph (2) of this subsection.

(1) The waiver request must establish good cause for the Board to grant the waiver which may include limitations of local building or zoning codes, limitations of existing building structural elements for Rehabilitation (excluding Reconstruction or Adaptive Reuse) 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 Rehabilitation (excluding Reconstruction) Developments. Staff may recommend the Board's approval for such a waiver if the Executive Director, the Deputy Executive Director with oversight of multifamily programs, and Deputy Executive Director with oversight of asset management find that the Applicant has established good cause for the waiver. 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 under this paragraph.

(2) The waiver request must establish how it is necessary to address circumstances beyond the Applicant's control and how, if the waiver is not granted, the Department will not fulfill some specific requirement of law. In this regard, the policies and purposes articulated in Texas Government Code, §§2306.001, 2306.002, 2306.359, and 2306.6701, are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program.

(b) Waivers Granted by the Executive Director. The Executive Director may waive requirements as provided in this rule. Even if this rule grants the Executive Director authority to waive a given item, the Executive Director may present the matter to the Board for consideration and action. Neither the Executive Director nor the Board shall grant any waiver to the extent such requirement is mandated by statute. Denial of a waiver by the Executive Director may be appealed to the Board in accordance with §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). Applicants should expect that waivers granted by the Executive Director will generally be very limited. The Executive Director's decision to defer to the Board will not automatically be deemed an adverse staff position with regard to the waiver request as public vetting of such requests is generally appropriate and preferred. However, this does not preclude a staff recommendation to approve or deny any specific request for a waiver.

(c) Waivers Granted by the Board. The Board, in its discretion, may waive any one or more of the rules in Subchapters B, C, E, and G of this chapter except no waiver shall be granted to provide forward commitments or if the requested waiver is prohibited by statute (i.e., statutory requirements may not be waived). The Board, in its discretion, may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the multifamily rules.

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

Filed with the Office of the Secretary of State on September 8, 2014.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 19, 2014
For further information, please call: (512) 475-3959

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SUBCHAPTER D. UNDERWRITING AND LOAN POLICY

10 TAC §§10.301 - 10.307

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 10, Subchapter D, §§10.301 - 10.307, concerning 2014 Underwriting and Loan Policies. The purpose of the repeal is to allow for the adoption of a new Subchapter D. New Subchapter D is being published concurrently with this proposed repeal.

FISCAL NOTE. Mr. Timothy K. Irvine, Executive Director, 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.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also 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 repeal will be to allow for the adoption of new rules to enhance the State's ability evaluate the feasibility of affordable housing developments proposed to be funded in part with limited state resources. There will not be any economic cost to any individuation required to comply with the repealed sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small businesses or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014, to October 20, 2014, to receive input on the repealed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Pam Cloyde; by email to pcloyde@tdhca.state.tx.us; or by FAX to (512) 475-4420. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. ON OCTOBER 20, 2014.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. The proposed repeal affects no other code, article or statute.

§10.301. General Provisions.
§10.302. Underwriting Rules and Guidelines.
§10.303. Market Analysis Rules and Guidelines.
§10.304. Appraisal Rules and Guidelines.
§10.305. Environmental Site Assessment Rules and Guidelines.
§10.306. Property Condition Assessment Guidelines.
§10.307. Direct Loan 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 8, 2014.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 19, 2014
For further information, please call: (512) 475-3959

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10 TAC §§10.301 - 10.307

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Subchapter D, §§10.301 - 10.307. The purpose of the new rules is to provide the Department and participants in the Department's affordable

housing programs guidance in awarding funds to properties that are economically viable and appropriate for their residents.

§10.301. General Provisions. This section provides the overall purpose of the rule and describes an appeal procedure. The rule is necessary for the underwriting review of affordable housing development's financial feasibility and economic viability that ensures the most efficient allocation of State resources.

§10.302. Underwriting Rules and Guidelines. This section describes the general provisions, underwriting processes and contents of the underwriting reports produced by the Department. Processes for analyzing the feasibility of an affordable housing development's operating revenue and expenses are described and procedures for development cost estimation are outlined.

§10.303. Market Analysis Rules and Guidelines. This section establishes the organization and contents of market study reports prepared by third-party market analyst professionals. The market study reports are used by the Department to assist in determining demand for the affordable housing developments being considered for funding.

§10.304. Appraisal Rules and Guidelines. This section establishes the organization and contents of appraisal reports prepared by third-party appraisers. The appraisals establish values for land and affordable housing developments and these values are used by the Department in analyzing the cost of a development which impacts feasibility.

§10.305. Environmental Site Assessment Rules and Guidelines. This section establishes the organization and contents of reports that assess the environmental conditions of an affordable housing development site. These reports are prepared by third-party environmental engineers and professionals. The reports help the Department award funding for developments that do not contain environmental conditions that could be harmful to residents.

§10.306. Property Condition Assessment Guidelines. This section establishes the organization and contents of reports that assess the physical condition of an existing affordable housing development that is proposed to be rehabilitated and repaired. The reports are prepared by third-party engineers and professionals. The reports help the Department determine the cost of the rehabilitation for feasibility purposes and to inform the Department regarding the scope of work needed to adequately rehabilitate the property.

§10.307. Direct Loan Requirements. This section discusses the repayment terms and conditions of loans made by the Department to owners of an affordable housing developments. Items such as loan amortization, term, lien position and construction loan requirements are defined.

FISCAL NOTE. Mr. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also 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 enhance the Department's ability to provide financially sound affordable housing developments. The cost to produce the Environmental Site Assessment report required under §10.305 may increase as a result of the additional scope of work relating to the identification of potentially hazardous explosive activities on-site or in the general area of the site. The average cost of filing an application is between $15,000 and $25,000, which may vary depending on the specific type of application. The incremental cost is not known. There are no other new or additional costs, other than those currently in effect, to persons required to comply with the new rules.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The average cost of filing an application is between $15,000 and $25,000, which may vary depending on the specific type of application. The proposed rules do not result in an increased cost of filing an application as compared to the existing program rules.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014, to October 20, 2014, to receive input on the repealed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Pam Cloyde; by email to pcloyde@tdhca.state.tx.us; or by FAX to (512) 475-4420. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. ON OCTOBER 20, 2014.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. The proposed sections affect no other code, article or statute.

§10.301. General Provisions.

(a) Purpose. This subchapter applies to the underwriting, Market Analysis, appraisal, Environmental Site Assessment, Property Condition Assessment, and Direct Loan 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 the Department's portfolio. In addition, this chapter guides staff in making recommendations to the Executive Award and Review Advisory Committee (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.

(b) Appeals. Certain programs contain express appeal options. Where not indicated, §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)) includes general appeal procedures. In addition, the Department encourages the use of Alternative Dispute Resolution ("ADR") methods, as outlined in §10.904 of this chapter (relating to Alternative Dispute Resolution (ADR) Policy).

§10.302. Underwriting Rules and Guidelines.

(a) General Provisions. Pursuant to Texas Government 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, §42(m)(2) of the Internal Revenue Code (the "Code"), requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. The rules adopted pursuant to the Texas Government Code and the Code are developed to result in a Credit Underwriting Analysis 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.

The Report contents will be based solely upon information that is provided in accordance with and within the timeframes set forth in the current Qualified Allocation Plan ("QAP") or Notice of Funds Availability ("NOFA"), as applicable.

(c) Recommendations in the Report. The conclusion of the Report includes a recommended award of funds or Housing Credit Allocation Amount based on the lesser amount calculated by the program limit method, if applicable, gap/debt coverage ratio ("DCR") method, or the amount requested by the Applicant as further described in paragraphs (1) - (3) of this subsection, and states any feasibility conditions to be placed on the award.

(1) Program Limit Method. For Applicants requesting a Housing Credit Allocation, 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 as defined in §10.3 of this chapter (relating to Definitions). For Applicants requesting funding through a Department program other than Housing Tax Credits, this method is based upon calculation of the funding limit based on the current program rules or NOFA at the time of underwriting.

(2) Gap/DCR 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 down to 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 or make adjustments to any Department financing, such that the cumulative DCR conforms to the standards described in this section.

(3) The Amount Requested. The amount of funds that is requested by the Applicant as reflected in the original Application documentation.

(d) Operating Feasibility. The operating financial feasibility of developments funded by the Department is tested by subtracting operating expenses, including replacement reserves and taxes, from income to determine Net Operating Income. The annual Net Operating Income is divided by the cumulative annual debt service required to be paid to determine the Debt Coverage Ratio ("DCR"). The Underwriter characterizes a Development as infeasible from an operational standpoint when the DCR does not meet the minimum standard set forth in paragraph (4)(D) of this subsection. The Underwriter may model adjustments to the financing structure, which could result in a re-characterization of the Development as feasible based upon specific conditions set forth in the Report.

(1) Income. In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's income estimate by determining the appropriate rental rate per unit based on contract, program, and market factors. Miscellaneous income, vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are applied unless well-documented support is provided.

(A) Rental Income. The Underwriter will independently calculate the 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 §10.303 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.

(ii) Net Program Rents. The Underwriter reviews the Applicant's proposed rent schedule and determines if it is consistent with the representations made in the remainder of the Application. The Underwriter uses the Gross Program Rents for the year that is most current at the time the underwriting begins and uses the most current utility information available. 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 EGI to account for any increase or decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.

(I) Units must be individually metered for all utility costs to be paid by the tenant.

(II) Gas utilities are verified on the building plans and elsewhere in the Application when applicable.

(III) Trash allowances paid by the tenant are rare and only considered when the building plans allow for individual exterior receptacles.

(IV) Refrigerator and range allowances are not considered part of the tenant-paid utilities unless the tenant is expected to provide their own appliances, and no eligible appliance costs are included in the Total Housing Development Cost schedule.

(iii) Contract Rents. The Underwriter reviews 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 increase.

(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 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 for garage income, pass-through utility payments, pass-through water, sewer and trash payments, cable fees, congregate care/assisted living/elderly facilities, and child care facilities.

(i) Exceptions must be justified by operating history of existing comparable properties.

(ii) The Applicant must show that the 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.

(iii) The Applicant's operating expense schedule should reflect an itemized offsetting cost associated with income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.

(iv) Collection rates of exceptional fee items will generally be heavily discounted.

(v) If an additional fee is charged for the use of an amenity, any cost associated with the construction, acquisition, or development of the hard assets needed to produce the additional fee for such amenity must be excluded from Eligible Basis.

(C) Vacancy and Collection Loss. The Underwriter generally uses a vacancy rate of 7.5 percent (5 percent vacancy plus 2.5 percent for collection loss). The Underwriter may use other assumptions based on conditions in the immediate market area. Qualified Elderly Developments and 100 percent project-based rental subsidy developments and other well documented cases may be underwritten at a combined 5 percent at the discretion of the Underwriter if the historical performance reflected in the Market Analysis is consistently higher than a 95 percent occupancy rate.

(D) Effective Gross Income ("EGI"). The Underwriter independently calculates EGI. If the EGI estimate provided by the Applicant is within 5 percent of the EGI calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating 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 pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate by line item comparisons based upon the specifics of each transaction, including the Development type, the size of the Units, and the Applicant's expectations as reflected in their pro forma. Historical stabilized certified financial statements of the Development or Third Party quotes specific to the Development will reflect the strongest data points to predict future performance. The Department's Database of properties in the same location or region as the proposed Development also provides heavily relied upon 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 Public Housing Authority ("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. Well documented information provided in the Market Analysis, Appraisal, the Application, and other sources may be considered.

(A) General and Administrative Expense ("G&A")--Expense for operational 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 Effective Gross Income as documented in a property management agreement. Typically, 5 percent of the Effective Gross Income is used, though higher percentages for rural transactions may be used. Percentages as low as 3 percent may be used if well documented.

(C) Payroll Expense. Expense for direct on-site staff payroll, insurance benefits, and payroll taxes including payroll expenses for repairs and maintenance typical of a comparable development. It does not, however, include direct security payroll or additional tenant services payroll.

(D) Repairs and Maintenance Expense. Expense for repairs and maintenance, Third-Party maintenance contracts and supplies. It should not include capitalized expenses that would result from major replacements or renovations. Direct payroll for repairs and maintenance activities are included in payroll expense.

(E) Utilities Expense. Utilities expense includes all gas and electric energy expenses paid by the Development.

(F) Water, Sewer, and Trash Expense ("WST"). Includes all water, sewer and trash expenses paid by the Development.

(G) Insurance Expense. Insurance expense includes any insurance 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 percent or a comparable assessed value may be used.

(ii) Property tax exemptions or a Proposed Payment In Lieu Of Tax ("PILOT") agreement must be documented as being reasonably achievable. At the discretion of the Underwriter, a property tax exemption that meets known federal, state and local laws may be applied based on the tax-exempt status of the Development Owner and its Affiliates.

(I) Reserves. An annual reserve for replacements of future capital expenses and any ongoing operating reserve requirements. The Underwriter includes minimum reserves 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 Property Condition Assessment ("PCA"). 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 PCA during the first fifteen (15) years of the long term pro forma. Higher reserves may be used if documented by a primary lender or syndicator.

(J) Other Expenses. The Underwriter will include other reasonable and documented expenses. These include audit fees, tenant services, security expense and compliance fees. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees. The most common other expenses are described in more detail in clauses (i) - (iv) of this subparagraph.

(i) Tenant Services. Cost to the Development of any non-traditional tenant benefit such as payroll for instruction or activities personnel and associated operating expenses. Tenant services expenses are considered in calculating the DCR.

(ii) Security Expense. Contract or direct payroll expense for policing the premises of the Development.

(iii) Compliance Fees. Include only compliance fees charged by the Department and are considered in calculating the DCR.

(iv) Cable Television Expense. Includes fees charged directly to the Development Owner to provide cable services to all Units. The expense will be considered only if a contract for such services with terms is provided and income derived from cable television fees is included in the projected EGI. Cost of providing

cable television in only the community building should be included in G&A as described in subparagraph (A) of this paragraph.

(K) The Underwriter may request additional documentation supporting some, none or all expense line items. If a rationale acceptable to the Underwriter for the difference is not provided, the discrepancy is documented in the Report. If the Applicant's total expense estimate is within 5 percent 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 first year stabilized NOI figure provided by the Applicant is within 5 percent of the NOI calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR, the Underwriter will maintain and use his independent calculation of NOI, unless the Applicant's first year stabilized EGI, total expenses, and NOI are each within 5 percent of the Underwriter's estimates.

(4) Debt Coverage Ratio. DCR is calculated by dividing NOI by the sum of scheduled loan principal and interest payments for all permanent sources of funds. Loan principal and interest payments are calculated based on the terms indicated in the term sheet(s) for financing submitted in the Application. Unusual or non-traditional financing structures may also be considered.

(A) Interest Rate. The rate documented in the term sheet(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide a breakdown of the rate index and component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate, 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. The Underwriter may adjust the underwritten interest rate based on data collected on similarly structured transactions or rate index history.

(B) Amortization Period. The Department generally requires an amortization of not less than thirty (30) years, and not more than forty (40) years (fifty (50) years for federally sourced loans), or an adjustment to the amortization is made for the purposes of the analysis and recommendations. In non-Housing Tax Credit transactions a lesser amortization period may be used if the Department's funds are fully amortized over the same period.

(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 thirty (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.

(i) For Developments other than HOPE VI and USDA transactions, if the DCR is less than the minimum, the recommendations of the Report may be based on an assumed reduction 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:

(I) a reduction of the interest rate or an increase in the amortization period for Direct Loans;

(II) a reclassification of Direct Loans to reflect grants, if permitted by program rules;

(III) a reduction in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet(s) as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(ii) If the DCR is greater than the maximum, the recommendations of the Report may be based on an assumed 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:

(I) reclassification of Department funded grants to reflect loans, if permitted by program rules;

(II) an increase in the interest rate or a decrease in the amortization period for Direct Loans;

(III) an 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/DCR method described in subsection (c)(2) of this section.

(iv) Although adjustments in debt service may become a condition of the Report, future changes in income, expenses, and financing terms could allow for an acceptable DCR.

(5) Long Term Pro forma. The Underwriter will create a 30-year operating pro forma.

(A) The Underwriter's first year stabilized pro forma is utilized unless the Applicant's first year stabilized EGI, operating expenses, and NOI are each within 5 percent of the Underwriter's estimates.

(B) A 2 percent annual growth factor is utilized for income and a 3 percent annual growth factor is utilized for expenses.

(C) Adjustments may be made to the long term pro forma if satisfactory support documentation is provided by the Applicant or as determined by the Underwriter.

(e) Total Housing Development Costs. The Development's need for permanent funds and, when applicable, the Development's Eligible Basis is based upon the projected Total Housing Development Cost. The Department's estimate of the Total Housing Development Cost will be based on the Applicant's development cost schedule to the extent that it 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 percent of the Underwriter's estimate. The Department's estimate of the Total Housing Development Cost for acquisition/Rehabilitation will be based in accordance with the PCA's estimated cost for the scope of work as defined by the Applicant and §10.306(a)(5) of this chapter (relating to PCA Guidelines). If the Applicant's 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.

(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 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, 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 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 §10.304 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 percent 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 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 percent 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. For any period of time during which the existing buildings are occupied or otherwise producing revenue, holding costs may not include capitalized costs, operating expenses, including, but not limited to, property taxes and interest expense.

(iii) In no instance will the acquisition cost utilized by the Underwriter exceed the lesser of the original acquisition cost evidenced by clause (ii)(I) of this subparagraph plus costs identified in clause (ii)(II)(-b-) of this subparagraph, or if applicable the "as-is" value conclusion evidenced by clause (ii)(II)(-a-) of this subparagraph. Acquisition cost is limited to appraised land value for transactions which include existing buildings that will be demolished. The resulting acquisition cost will be referred to as the "Adjusted Acquisition Cost."

(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 §10.304 of this chapter. The underwritten eligible building cost will be the lowest of the values determined based on clauses (i) - (iii) 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;

(iii) 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 and that will continue to affect the Development after transfer to the new owner in determining the building value. 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 and supporting documentation.

(3) Site Work Costs. The Underwriter will only consider costs of Site Work that are well documented and certified to by a Third Party engineer on the required Application forms and 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. The Underwriter will consider amenities, specifications and development types not included in the Average Quality standard.

(B) Rehabilitation and Adaptive Reuse.

(i) The Applicant must provide a detailed narrative description of the scope of work for the proposed rehabilitation.

(ii) The Underwriter will use cost data provided by the PCA. In the case where the PCA is inconsistent with the Applicant's estimate as proposed in the Total Housing Development Cost schedule and/or the Applicant's scope of work, the Underwriter may request a supplement executed by the PCA provider reconciling the Applicant's estimate and detailing the difference in costs. If the Underwriter determines that the reasons for the initial difference in costs are not well-documented, the Underwriter utilizes the initial PCA estimations.

(5) Contingency. All contingencies identified in the Applicant's project cost schedule, including any soft cost contingency, will be limited to a maximum of 7 percent of Building Cost plus Site Work and off-sites for New Construction and Reconstruction Developments, and 10 percent of Building Cost plus Site Work and off-sites 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 costs in calculating the eligible contingency cost. The Applicant's estimate is used by the Underwriter if less than the 7 percent or 10 percent limit, as applicable, but in no instance less than 5 percent.

(6) Contractor Fee. 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. Contractor fees are limited to a total of 14 percent on Developments with Hard Costs of $3 million or greater, the lesser of $420,000 or 16 percent on Developments with Hard Costs less than $3 million and greater than $2 million, and the lesser of $320,000 or 18 percent on Developments with Hard Costs at $2 million or less. For 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 fees and Development Consultant fees included in Eligible Basis cannot exceed 15 percent of the project's eligible costs, less Developer fees, for Developments proposing fifty (50) Units or more and 20 percent of the project's eligible costs, less Developer fees, for Developments proposing forty-nine (49) Units or less.

(B) Any additional Developer fee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs (15 percent for Developments with fifty (50) or more Units, or 20 percent for Developments with forty-nine (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 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing fifty (50) Units or more and 20 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing forty-nine (49) Units or less; and

(ii) no Developer fee attributable to an identity of interest acquisition of the Development will be included.

(D) Eligible Developer fee is multiplied by the appropriate Applicable Percentage depending whether it is attributable to acquisition or rehabilitation basis.

(E) For non-Housing Tax Credit developments, the percentage can be up to 15 percent, 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. Eligible construction period interest is limited to the lesser of actual eligible construction period interest, or the interest on one (1) year's fully drawn construction period loan funds at the construction period interest rate indicated in the term sheet(s). Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related Party construction loans is not included in Eligible Basis.

(9) Reserves. The Underwriter will utilize the amount described in the Applicant's project cost schedule if it is within the range of two (2) to six (6) 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 reasonable and well documented. Reserves do not include capitalized asset management fees, guaranty 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 assumptions acceptable to the Underwriter. In no instance will total reserves exceed twelve (12) months of stabilized operating expenses plus debt service (including transferred replacement reserves for USDA or HUD financed rehabilitation transactions).

(10) Other Soft Costs. For Housing Tax Credit Developments, all other soft costs are divided into eligible and ineligible costs. Eligible costs are defined by the Code, but generally are costs that can be capitalized in the basis of the Development for tax purposes. Ineligible costs are those that tend to fund future operating activities and operating reserves. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Code. If the Underwriter questions the amount or eligibility of any soft costs, the Applicant will be given an opportunity to clarify and address the concern prior to completion of the Report.

(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). The Underwriter will 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 in this chapter;

(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;

(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 will result in an Application being referred to the Committee. The Committee will review any recommendation made under this subsection to deny an Application for a Grant, Direct Loan and/or Housing Credit Allocation prior to completion of the Report and posting to the Department's website.

(g) Other Underwriting Considerations. The Underwriter will evaluate additional feasibility elements as described in paragraphs (1) - (3) of this subsection.

(1) 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 designed to comply with the QAP, as proposed.

(2) 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.

(3) 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 well below the 50 percent AMGI level or other maximum rent limits established by the Department. The Underwriter should 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 and equal to any project based rental subsidy rent to be utilized for the Development;

(B) Operating Expenses. A Supportive Housing Development may have significantly higher expenses for payroll, management fee, security, resident support services, or other items than typical affordable housing developments. The Underwriter will rely heavily upon the historical operating expenses of other Supportive Housing Developments provided by the Applicant or otherwise available to the Underwriter;

(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 financial 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. 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. The method for determining the Gross Capture Rate for a Development is defined in §10.303(d)(11)(F) of this chapter. The Underwriter will independently verify all components and conclusions of the Gross Capture Rate and may, at their discretion, use independently acquired demographic data to calculate demand and may make a determination of the effective Gross Capture Rate based upon an analysis of the Sub-market. The Development:

(A) is characterized as a Qualified Elderly Development and the Gross Capture Rate exceeds 10 percent for the total proposed Units; or

(B) is outside a Rural Area and targets the general population, and the Gross Capture Rate exceeds 10 percent for the total proposed Units; or

(C) is in a Rural Area and targets the general population, and the Gross Capture Rate exceeds 30 percent; or

(D) is Supportive Housing and the Gross Capture Rate exceeds 30 percent.

(E) Developments meeting the requirements of subparagraph (A), (B), (C), or (D) 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 §10.303 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 which is at least 50 percent 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 Underwriter's recommended financing structure, is not repayable from Cash Flow within the first fifteen (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 percent of AMGI is less than the Net Program Rent for Units with rents restricted at or below 50 percent 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 percent of AMGI level.

(4) Initial Feasibility.

(A) The first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68 percent for Rural Developments 36 Units or less and 65 percent for all other Developments.

(B) The first year DCR is below 1.15.

(5) Long Term Feasibility. The Long Term Pro forma, as defined in subsection (d)(5) of this section, reflects a Debt Coverage Ratio below 1.15 or negative cash flow at any time during years two through fifteen.

(6) Exceptions. The infeasibility conclusions may be excepted where either of the criteria apply.

(A) The requirements in this subsection may be waived by the Executive Director of the Department or by the Committee 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.

(i) The Development will receive Project-based Section 8 Rental Assistance for at least 50 percent 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 percent 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 percent of the Units or HOPE VI financed transactions.

(iv) The Development will be characterized as Supportive Housing for at least 50 percent of the Units and evidence of adequate financial support for the long term viability of the Development is provided.

(v) The Development has other long term project based restrictions on rents for at least 50 percent of the Units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10 percent lower than both the Net Program Rent and Market Rent.

§10.303. 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 Property rental rates or sales price and state conclusions as to the impact of the Property 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.

(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) - (3) of this subsection.

(1) The approved Qualified Market Analyst list will be updated and published annually on or about October 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 thirty (30) days prior to the first day of the competitive tax credit Application Acceptance Period or thirty (30) days prior to submission of any other application for funding for which the Market Analyst must be approved.

(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.

(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.

(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. 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.

(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 ninety (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.

(3) The list of approved Qualified Market Analysts will be posted on the Department's web site no later than November 1st.

(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 Property 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 Property address or location, description of Property, 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 Property. 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 (3) year history of ownership for the subject Property.

(8) Secondary Market Area. A SMA is not required, but may be defined at the discretion of the Market Analyst to support identified demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one SMA definition. The entire PMA, as described in this paragraph, must be contained within the SMA boundaries. The Market Analyst must adhere to the methodology described in this paragraph when determining the Secondary Market Area. (§2306.67055)

(A) The SMA will be defined by the Market Analyst with:

(i) size based on a base year population of no more than 250,000 people inclusive of the PMA; and

(ii) boundaries based on U.S. census tracts, ZIP codes, or place, as defined by the U.S. Census Bureau.

(B) The Market Analyst's definition of the SMA must include:

(i) a detailed description of why the subject Development is expected to draw a significant number of tenants or homebuyers from the defined SMA;

(ii) a complete demographic report for the defined SMA; and

(iii) a scaled distance map indicating the SMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order, ZIP codes or places with labels as well as the location of the subject Development and all comparable Developments.

(9) Primary Market Area. 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) size based on a base year population of no more than 100,000 people;

(ii) boundaries based on U.S. census tracts, ZIP codes, or place, as defined by the U.S. Census Bureau; and

(iii) the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract or ZIP code, and if the PMA is defined by census tract or ZIP code.

(B) The Market Analyst's definition of the PMA must include:

(i) a detailed description of why the subject Development is expected to draw a majority of its prospective tenants or homebuyers from the defined PMA;

(ii) a complete demographic report for the defined PMA; and

(iii) a scaled distance map indicating the PMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order, ZIP codes or places with labels as well as the location of the subject Development and all comparable Developments.

(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 location adjustments. Provide a data sheet for each 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; and

(xi) for rental developments only, the occupancy and turnover.

(10) Market Information.

(A) For each of the defined market areas, identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph; the data must be clearly labeled as relating to either the PMA or the SMA, if applicable:

(i) total housing;

(ii) rental developments (all multi-family);

(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 §10.302(d)(1)(C) of this chapter (relating to Underwriting Rules and Guidelines). 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 (5) 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 Developments targeting seniors, 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 or ZIP codes on which the report is based.

(E) Demand. Provide a comprehensive evaluation of the need for the proposed housing for the Development as a whole and each Unit type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available.

(i) Demographics. The Market Analyst should use demographic data specific to the characteristics of the households that will be living in the proposed Development. For example, the Market Analyst should use demographic data specific to elderly population for a Qualified 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 (5) year period with the year of Application submission as the base year.

(II) Target. If applicable, adjust the household projections for the Qualified Elderly targeted 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 1.5 persons per Bedroom (round up).

(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 35 percent for the general population and 50 percent for Qualified 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 1.5 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 Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25 percent of Gross 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 based on 1.5 persons per Bedroom (round up) or one person for Efficiency Units.

(II) For Developments targeting the general population:

(-a-) minimum eligible income is based on a 35 percent rent to income ratio;

(-b-) appropriate household size is defined as 1.5 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 (3) or more Bedrooms:

(-a-) minimum eligible income is based on a 35 percent rent to income ratio;

(-b-) appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and

(-c-) Gross Demand includes both renter and owner households.

(IV) For Qualified Elderly Developments or Supportive Housing:

(-a-) minimum eligible income is based on a 50 percent rent to income ratio; and

(-b-) Gross Demand includes all household sizes and both renter and owner households.

(iv) Demand from Secondary Market Area:

(I) Potential Demand from an SMA should be calculated in the same way as Potential Demand from the PMA;

(II) Potential Demand from an SMA may be included in Gross Demand to the extent that SMA demand does not exceed 25 percent of Gross Demand; and

(III) the supply of proposed and unstabilized Comparable Units in the SMA must be included in the calculation of the capture rate at the same proportion that Potential Demand from the SMA is included in Gross Demand.

(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.

(11) 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) - (I) 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 §10.302(i) of this chapter. 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) Total adjustments in excess of 15 percent must be supported with additional narrative.

(v) Total adjustments in excess of 25 percent 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 percent of AMGI; two-Bedroom Units restricted at 60 percent 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.

(E) Relevant Supply. The Relevant Supply of proposed and unstabilized Comparable Units includes:

(i) the proposed subject Units;

(ii) Comparable Units in an Application with priority over the subject pursuant to §10.201(6) of this chapter.

(iii) Comparable Units in previously approved but Unstabilized Developments in the PMA; and

(iv) Comparable Units in previously approved but Unstabilized Developments in the SMA, in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.

(F) Gross Capture Rate. The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand. The Market Analyst must calculate a Gross Capture Rate for the subject Development as a whole, as well as for each Unit Type by number of Bedrooms and rent restriction categories, and market rate Units, if applicable. Refer to §10.302(i) of this chapter for feasibility criteria.

(G) A complete demand and capture rate analysis is required in every Market Study, regardless of the current occupancy level of an existing Development.

(H) Absorption. Project an absorption period for the subject Development to achieve Breakeven Occupancy. State the absorption rate.

(I) Market Impact. Provide an assessment of the impact the subject Development, as completed, will have on existing Developments supported by Housing Tax Credits in the Primary Market. (§2306.67055)

(12) Photographs. Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. An aerial photograph is desirable but not mandatory.

(13) 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.

(14) 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 §10.303(c)(1)(B) and (C) of this chapter.

(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 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.

§10.304. 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.

(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 qualifications of each appraiser are determined on a case-by-case basis by the Director of Real Estate Analysis or review appraiser, based upon the quality of the report itself and the experience and educational background of the appraiser. At minimum, a qualified 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.

(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 (3) 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.), 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 (3) 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.).

(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 reader 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 (3) 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 or 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 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" inclusive of the value associated with the rental assistance. 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 restricted rents should be contemplated 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.

§10.305. 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 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 asbestos containing materials would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;

(5) if the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for Lead Based Paint would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;

(6) 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;

(7) assess the potential for the presence of Radon on the Property, and recommend specific testing if necessary;

(8) 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

(9) include a vapor encroachment screening in accordance with Vapor Intrusion 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 a 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.

§10.306. Property Condition Assessment Guidelines.

(a) General Provisions. The objective of the Property Condition Assessment (PCA) for Rehabilitation Developments is to provide cost estimates for repairs and replacements, and new construction of additional buildings or amenities, which are: immediately necessary repairs and replacements; improvements proposed by the Applicant as outlined in a scope of work narrative submitted by the Applicant to the PCA provider that is consistent with the scope of work provided in the Application; and expected to be required throughout the term of the Affordability Period and not less than thirty (30) years. The PCA prepared for the Department should be conducted and reported in conformity with the American Society for Testing and Materials "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018") except as provided for in subsections (b) and (c) of this section. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section. The PCA must include the Department's PCA Cost Schedule Supplement which details all Rehabilitation costs and projected repairs and replacements through at least twenty (20) years. The PCA must also include discussion and analysis of:

(1) Useful Life Estimates. For each system and component of the property the PCA should assess the condition of the system or component, and estimate its remaining useful life, citing the basis or the source from which such estimate is derived;

(2) Code Compliance. The PCA should review and 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 PCA adequately considers any and all applicable federal, state, and local laws and regulations which may govern any work performed to the subject Property. For transactions with Direct Loan funding from the Department, the PCA provider must also evaluate cost estimates to meet the International Existing Building Code and other property standards;

(3) Program Rules. The PCA should 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, particular consideration being given to accessibility requirements, the Department's Housing Quality Standards, and any scoring criteria for which the Applicant may claim points;

(4) Reconciliation of Scope of Work and Costs. The PCA report must include an analysis, detailed and shown on the Department's PCA Cost Schedule Supplement, that reconciles the scope of work and immediate costs identified in the PCA with the Applicant's scope of work and costs (Hard Costs) as presented on the Applicant's development cost schedule; and

(5) Cost Estimates for Repair and Replacement. It is the responsibility of the Applicant to ensure that the PCA provider is apprised of all development activities associated with the proposed transaction and consistency of the total immediately necessary and proposed repair and replacement cost estimates with the Total Housing Development Cost schedule and scope of work submitted as an exhibit of the Application.

(A) Immediately Necessary Repairs and Replacement. Systems or components which are expected to have a remaining useful life of less than one (1) 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 should be considered immediately necessary repair and replacement. The PCA 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 repair, replacement, or New Construction above and beyond the immediate repair and replacement described in subparagraph (A) of this paragraph, such items must be identified and the nature or source of obsolescence or improvement to the operations of the Property discussed. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or new construction which is identified as being above and beyond the immediate need, citing the basis or the source from which such cost estimate is derived.

(C) Expected Repair and Replacement Over Time. The term during which the PCA should estimate the cost of expected repair and replacement over time must equal 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 PCA 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 PCA 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 and no less than fifteen (15) 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 percent per annum.

(b) Any costs not identified and discussed in the PCA as part of subsection (a)(4), (5)(A) and (B) of this section will not be included in the underwritten Total Development Cost in the Report.

(c) 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.

(d) The Department may consider for acceptance reports prepared according to other standards which are not specifically named in subsection (b) 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.

(e) The PCA 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. The PCA report should also include a statement that the person or company preparing the PCA report will not materially benefit from the Development in any other way than receiving a fee for performing the PCA. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

§10.307. Direct Loan Requirements.

(a) Direct Loans through the Department must be structured according to the criteria as identified in paragraphs (1) - (5) of this subsection:

(1) the interest rate may be as low as zero percent provided all applicable program requirements are met as well as requirements in this subchapter;

(2) unless structured only as an interim construction or bridge loan, the loan term shall be no less than fifteen (15) years and no greater than forty (40) years and the amortization schedule shall be no less than thirty (30) years and no greater than forty (40) years. The Department's debt will match within six (6) months of the shortest term or amortization of any senior debt so long as neither exceeds forty (40) years;

(3) the loan shall be structured with a regular monthly payment beginning on the first day of the 25th full month following the actual date of loan closing and continuing for the loan term. If the first lien mortgage is a federally insured HUD or FHA mortgage, the Department may approve a loan structure with annual payments payable from surplus cash flow provided that the debt coverage ratio, inclusive of the loan, continues to meet the requirements in this subchapter. The Board may also approve, on a case-by-case basis, a cash flow loan structure provided it determines that the financial risk is outweighed by the need for the proposed housing;

(4) the loan shall have a deed of trust with a permanent lien position that is superior to any other sources for financing including hard repayment debt that is less than or equal to the Direct Loan amount and for any other sources that have soft repayment structures, non-amortizing balloon notes, have deferred forgivable provisions or in which the lender has an identity of interest with any member of the Development Team. The Board may also approve, on a case-by-case basis, an alternative lien priority provided it determines that the financial risk is outweighed by the need for the proposed housing; and

(5) If the Direct Loan amounts to more than 50 percent of the Total Housing Development Cost, except for Developments also financed through the USDA §515 program, the Application must include the documents as identified in subparagraphs (A) and (B) of this paragraph:

(A) a letter from a Third Party CPA verifying the capacity of the Applicant, Developer or Development Owner to provide at least 10 percent of the Total Housing Development Cost as a short term loan for the Development; or

(B) evidence of a line of credit or equivalent tool equal to at least 10 percent of the Total Housing Development Cost from a financial institution that is available for use during the proposed Development activities.

(b) HOME Direct Loans through the Department must observe the following construction, occupancy, and repayment provisions in accordance with 24 CFR 92 and as included in the HOME Direct Loan documents:

(1) Construction must begin no later than twelve (12) months from the date of "Committing to a specific local project" as defined in 24 CFR Part 92 and must be completed within twenty-four (24) months of the actual date of loan closing as reflected by the development's certificate(s) of occupancy and Certificate of Substantial Completion (AIA Form G704). A final construction inspection request must be sent to the Department within 18 months of the actual loan closing date, with the repayment period beginning on the first day of the 25th month following the actual date of loan closing. Extensions to the construction or development period may only be made for good cause and approved by the Executive Director or authorized designee provided the start of construction is no later than twelve (12) months from the date of committing to a specific local project;

(2) Initial occupancy by eligible tenants shall occur within six (6) months of project completion. Requests to extend the initial occupancy period must be accompanied by marketing information and a marketing plan which will be submitted by the Department to HUD for final approval;

(3) repayment will be required on a per unit basis for units that have not been rented to eligible households within twenty-four (24) months of project completion; and

(4) termination and repayment of the HOME award in full will be required for any development that is not completed within four (4) years of the date of funding commitment.

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 8, 2014.

TRD-201404295
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 19, 2014
For further information, please call: (512) 475-3959

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SUBCHAPTER E. POST AWARD AND ASSET MANAGEMENT REQUIREMENTS

10 TAC §§10.400 - 10.408

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 10, Subchapter E, §§10.400 - 10.408. New Subchapter E, §§10.400 - 10.408 is being proposed concurrently with this repeal. The purpose of the repeal is to allow for clarification and correction of information in certain sections of the rule and to allow for the adoption of new sections that will ensure accurate processing of post award activities and communicate more effectively with multifamily development owners regarding their responsibilities after funding or award by the Department.

FISCAL NOTE. Mr. Timothy K. Irvine, Executive Director, 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.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also 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 repeal will be to allow for the adoption of new rules to enhance the State's ability to provide decent, safe, sanitary and affordable housing. There will not be any economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small businesses or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held until October 20, 2014, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Cari Garcia; by email to cari.garcia@tdhca.state.tx.us; or by FAX to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. ON OCTOBER 20, 2014.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. The proposed repeal affects no other code, article or statute.

§10.400. Purpose.
§10.401. General Commitment or Determination Notice Requirements and Documentation.
§10.402. Housing Tax Credit and Tax Exempt Bond Developments.
§10.403. Direct Loans.
§10.404. Reserve Accounts.
§10.405. Amendments and Extensions.
§10.406. Ownership Transfers (§2306.6713).
§10.407. Right of First Refusal.
§10.408. Qualified Contract 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 8, 2014.

TRD-201404292

Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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10 TAC §§10.400 - 10.408

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Subchapter E, §§10.400 - 10.408. The purpose of the new rules is to clarify and correct information in all sections to ensure accurate processing of post award activities and communicate more effectively with multifamily development owners regarding their responsibilities after funding or award by the Department. Post award activities include requests for action to be considered on developments awarded funding from the Department through the end of the affordability period.

FISCAL NOTE. Mr. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also 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 to improve the State's ability to ensure that State resources used for affordable multifamily housing are efficient and result in viable developments. The average cost of filing an application is between $15,000 and $25,000, which may vary depending on the specific type of application. The proposed rules do not result in an increased cost of filing an application as compared to the existing program rules.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The average cost of filing an application is between $15,000 and $25,000, which may vary depending on the specific type of application. The proposed rules do not result in an increased cost of filing an application as compared to the existing program rules.

REQUEST FOR PUBLIC COMMENT. The public comment period will be until October 20, 2014, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Cari Garcia or by email to cari.garcia@tdhca.state.tx.us or by FAX to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. on OCTOBER 20, 2014.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed new sections affect no other code, article or statute.

§10.400. Purpose.

The purpose of this subchapter is to establish the requirements governing the post award and asset management activities associated with awards of multifamily development assistance pursuant to Texas Government Code, Chapter 2306 and its regulation of multifamily funding provided through the Texas Department of Housing and Community Affairs (the "Department") as authorized by the legislature. This subchapter is designed to ensure that Developers and Development Owners of low-income Developments that are financed or otherwise funded

through the Department maintain safe, decent and affordable housing for the term of the affordability period. Therefore, unless otherwise indicated in the specific section of this subchapter, any uncorrected issues of noncompliance outside of the Corrective Action Period or outstanding fees (related to the Development subject to the request) owed to the Department, must be resolved, as detailed in each subsection, before a request for any post award activity described in this subchapter will be completed.

§10.401. General Commitment or Determination Notice Requirements and Documentation.

(a) A Commitment or Determination Notice shall not be issued with respect to any Development for an unnecessary amount or where the cost for the total development, acquisition, construction or rehabilitation exceeds the limitations established from time to time by the Department and the Board.

(b) All Commitments or Determination Notices, whether reflected in the Commitment or Determination Notice or not, are made subject to full compliance with all provision of law and rule, including compliance with the Qualified Allocation Plan, the Uniform Multifamily Rules, the Multifamily Housing Revenue Bond Rules, completion of underwriting and satisfactory compliance with the results thereof, full and satisfactory addressing of any Administrative Deficiencies and conditions of award, Commitment, Contract or any other matters.

(c) The Department shall notify, in writing, the mayor, chief county judge, or other appropriate official of the municipality or county, as applicable, in which the Development is located informing him/her of the Board's issuance of a Commitment or Determination Notice, as applicable.

(d) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or completion of construction with respect to a Development and/or apply administrative penalties if:

(1) the Applicant or the Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure to meet any of the conditions of such Commitment, Determination Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Application process for the Development;

(2) any material statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;

(3) an event occurs with respect to the Applicant or the Development Owner which would have made the Application ineligible for funding pursuant to Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-Clearance for Applications) if such event had occurred prior to issuance of the Commitment, Determination Notice or Carryover Allocation; or

(4) the Applicant or the Development Owner or the Development, as applicable, fails after written notice and a reasonable opportunity to cure to comply with this chapter or other applicable Department rules or the procedures or requirements of the Department.

(e) Direct Loan Commitment. The Department shall execute, with the Development Owner, a Commitment which shall confirm that the Board has approved the loan and provide the loan terms. The Commitment may be abbreviated and will generally not express all terms and conditions that will be included in the loan documents. Department staff may choose to issue an "Award Letter" in lieu of a Commitment in instances in which a Federal Commitment cannot be made until loan closing or until all financing is secured. An Award Letter is subject to all of the same terms and conditions as a Commitment except that it may not constitute a Federal Commitment. For HOME Direct Loans, an actual Federal Commitment may not occur in the HUD IDIS system until all financing is secured or loan closing, whichever comes first, at which time all terms and conditions will be included in the loan documents. The Award Letter shall list an expiration date no earlier than thirty (30) days from the date issued by the Department unless signed and returned. To the extent the terms reflected in an Award Letter are amended by the Department, a new Award Letter would be issued by the Department to govern the award.

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

(a) Commitment. For Competitive HTC Developments the Department shall issue a Commitment to the Development Owner which shall confirm that the Board has approved the Application and state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in Subchapter D of this chapter (relating to Underwriting and Loan Policy) and that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §10.901 of this chapter (relating to Fee Schedule), and satisfies any conditions set forth therein by the Department. The Commitment expiration date may not be extended.

(b) Determination Notices. For Tax Exempt Bond Developments the Department shall issue a Determination Notice which shall confirm the Board's determination that the Development satisfies the requirements of this chapter as applicable and other applicable Department rules in accordance with the §42(m)(1)(D) of the Internal Revenue Code (the "Code"). The Determination Notice shall also state the Department's commitment to issue IRS Form(s) 8609 to the Development Owner in a specified amount, subject to the requirements set forth in the Department's rules, as applicable. The Determination Notice shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in §10.901 of this chapter and satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended without prior Board approval for good cause. The Determination Notice will terminate if the Tax Exempt Bonds are not closed within the timeframe provided for by the Board on its approval of the Determination Notice or if the financing or Development changes significantly as determined by the Department pursuant to its rules and any conditions of approval included in the Board approval or underwriting report.

(c) The amount of tax credits reflected in the IRS Form(s) 8609 may be greater or less than the amount set forth in the Determination Notice based upon the Department's and the bond issuer's determination as of each building's placement in service. Any increase of tax credits, from the amount specified in the Determination Notice, at the time of each building's placement in service will only be permitted if it is determined necessary by the Department, as required by §42(m)(2)(D) of the Code through the submission of the Cost Certification package. Increases to the amount of tax credits that exceed 110 percent of the amount of credits reflected in the Determination Notice are contingent upon approval by the Board. Increases to the amount of tax credits that do not exceed 110 percent of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director. Increases to the tax credit amount are subject to the Credit Increase Fee as described in §10.901 of this chapter.

(d) Documentation Submission Requirements at Commitment of Funds. No later than the expiration date of the Commitment (or no later than December 31 for Competitive HTC Applications, whichever is earlier) or Determination Notice, the documentation described in paragraphs (1) - (6) of this subsection must be provided. Failure to provide these documents may cause the Commitment or Determination Notice to be rescinded:

(1) for entities formed outside the state of Texas, evidence that the entity filed a Certificate of Application for foreign qualification in Texas, a Franchise Tax Account Status from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State. If the entity is newly registered in Texas and the Franchise Tax Account Status or Certificate of Fact are not available, a statement can be provided to that effect;

(2) for Texas entities, a copy of the Certificate of Filing for the Certificate of Formation from the Office of the Secretary of State; a Certificate of Fact from the Secretary of State and a Franchise Tax Account Status from the Texas Comptroller of Public Accounts. If the entity is newly registered and the Certificate of Fact and the Franchise Tax Account Status are not available, a statement can be provided to that effect;

(3) evidence that the signer(s) of the Commitment or Determination Notice have the authority to sign on behalf of the Applicant in the form of a corporate resolution which indicates the sub-entity in Control and that the Person(s) signing the Application constitute all Persons required to sign or submit such documents;

(4) evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan;

(5) evidence of satisfaction of any conditions identified in the Real Estate Analysis report or any other conditions of the award required to be met at Commitment or Determination Notice; and

(6) documentation of any changes to representations made in the Application subject to §10.405 of this chapter (relating to Amendments and Extensions).

(e) Post Bond Closing Documentation Requirements.

(1) Regardless of the issuer of the bonds, no later than sixty (60) calendar days following closing on the bonds, the Development Owner must submit:

(A) a Management Plan and an Affirmative Marketing Plan created in compliance with the Department's Affirmative Marketing Rule in §10.617 of Subchapter F;

(B) A training certificate from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager has attended at least five (5) hours of Fair Housing training within the last year;

(C) A training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended at least five (5) hours of Fair Housing training within the last year;

(D) evidence that the financing has closed, such as an executed settlement statement; and

(E) if the Development has an existing LURA with the Department, a fully executed and recorded Agreement of Assignment and Assumption of LURA (aka "Agreement to Comply").

(2) Certifications required under paragraph (1)(B) and (C) of this subsection must not be older than two (2) years from the date of the submission deadline.

(f) Carryover (Competitive HTC Only). All Developments which received a Commitment, and will not be placed in service and receive IRS Form(s) 8609 in the year the Commitment was issued, must submit the Carryover documentation, in the form prescribed by the Department in the Carryover Manual, no later than the Carryover Documentation Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) of the year in which the Commitment is issued pursuant to §42(h)(1)(C) of the Code.

(1) Commitments for credits will be terminated if the Carryover documentation has not been received by this deadline, unless an extension has been approved. This termination is final and not appealable, and immediately upon issuance of notice of termination staff is directed to award the credits to other qualified Applicants based on the approved waiting list.

(2) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be reevaluated by the Department and a reduction of credit or change in conditions may result.

(3) All Carryover Allocations will be contingent upon the Development Owner providing evidence that they have and will maintain Site Control through the 10 Percent Test or through the anticipated closing date, whichever is earlier. For purposes of this paragraph, Site Control must be identical to the Development Site that was submitted at the time of Application submission as determined by the Department.

(4) Confirmation of the right to transact business in Texas, as evidenced by the Franchise Tax Account Status (the equivalent of the prior Certificate of Account Status) from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State must be submitted with the Carryover Allocation.

(g) 10 Percent Test (Competitive HTC Only). No later than July 1 of the year following the submission of the Carryover Allocation Agreement, documentation must be submitted to the Department verifying that the Development Owner has expended more than 10 percent of the Development Owner's reasonably expected basis, pursuant to §42(h)(1)(E)(i) and (ii) of the Code (as amended by The Housing and Economic Recovery Act of 2008), and Treasury Regulations, §1.42-6. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (5) of this subsection, along with all information outlined in the Post Carryover Activities Manual. Satisfaction of the 10 Percent Test will be contingent upon the submission of the items described in paragraphs (1) - (5) of this subsection as well as all other conditions placed upon the Application in the Commitment. Documentation to be submitted includes:

(1) an Independent Accountant's Report and Taxpayer's Basis Schedule form. The report must be prepared on the accounting firm's letterhead and addressed to the Development Owner or an Affiliate of the Development Owner. The Independent Accountant's Report and Taxpayers Basis Schedule form must be signed by the Development Owner.

(2) evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site;

(3) for New Construction, Reconstruction, and Adaptive Reuse Developments, a certification from a Third Party civil engineer or architect stating that all necessary utilities will be available at the

Development Site and that there are no easements, licenses, royalties, or other conditions on or affecting the Development that would materially and adversely impact the ability to acquire, develop, and operate as set forth in the Application. Copies of such supporting documents will be provided upon request;

(4) For the Development Owner and on-site or regional property manager, a training certificate from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager attended at least five (5) hours of Fair Housing training. For architects and engineers, a training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineers responsible for certifying compliance with the Department's accessibility and construction standards has attended at least five (5) hours of Fair Housing training within the last year. Training certificates must demonstrate training on or before the date the 10 Percent Test Documentation is submitted; and

(5) a Certification from the lender and syndicator identifying all Guarantors known at that time.

(h) Construction Status Report. Within three (3) months of the close of the construction loan or partnership agreement, whichever comes first, and every quarter thereafter all multifamily developments must submit a construction status report. The initial report shall consist of the items identified in paragraphs (1) - (4) of this subsection. All subsequent reports shall contain items identified in paragraphs (3) and (4) of this subsection and must include any changes or amendments to items in paragraphs (1) - (2) if applicable. Construction status reports shall be due by the tenth day of the month following each quarter end (January, April, July, and October) and continue on a quarterly basis until the entire development is complete as evidenced by the final Application and Certificate for Payment (AIA Document G702 and G703) or equivalent form approved for submission by the construction lender and/or investor. The construction status report submission consists of:

(1) the executed partnership agreement with the investor (identifying all Guarantors) or other documents setting forth the legal structure and ownership;

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

(3) the most recent Application and Certificate for Payment (AIA Document G702 and G703) certified by the Architect of Record (or equivalent form approved for submission by the construction lender and/or investor); and

(4) all Third Party construction inspection reports not previously submitted.

(i) LURA Origination (Competitive HTC Only). The Department will draft a LURA for the Development Owner that will impose the income and rent restrictions identified in the Development's final underwriting report and other representations made in the Application, including but not limited to specific commitments to provide tenant services, to lease to Persons with Disabilities and/or to provide specific amenities. The executed LURA and all exhibits and addendums will be sent to the Development Owner whereupon the Development Owner will then execute the LURA and have the fully-executed document recorded in the real property records for the county in which the Development is located. The original recorded LURA must be returned to the Department no later than the end of the first year of the Credit Period. In general, no Housing Tax Credits are allowed to be issued for a building unless there is a properly executed and recorded LURA in effect at the end of the first year of the Credit Period. Nothing in this section negates a Development Owner's responsibility for full compliance with §42(h)(6) of the Code. The Department will not issue IRS Form(s) 8609 until it receives the original, properly-recorded LURA, or has alternative arrangements which are acceptable to the Department and approved by the Executive Director. In instances where the document is electronically recorded and the electronic recorded file is provided to the Department, the Development Owner will not be responsible for returning the original and executed LURA in addition to the electronic version.

(j) Cost Certification. The Department conducts a feasibility analysis in accordance with §42(m)(2)(C)(i)(III) of the Code and Subchapter D of this chapter (relating to Underwriting and Loan Policy) to make a final determination on the allocation of Housing Tax Credits. The requirements for cost certification include those identified in paragraphs (1) - (3) of this subsection.

(1) Development Owners must file cost certification documentation no later than January 15 following the first year of the Credit Period, as defined in §42(f)(1) of the Code.

(2) The Department will evaluate the cost certification documentation and notify the Development Owner of any additional required documentation. The Department reserves the right to request additional documents or certifications as it deems necessary or useful in the determination of the Development's eligibility for a final Housing Tax Credit allocation amount. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be sent to the syndicator.

(3) IRS Form(s) 8609 will not be issued until the conditions as stated in subparagraphs (A) - (H) of this paragraph have been met. The Development Owner has:

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

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

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

(iii) the approved Placed in Service deadline;

(B) provided a complete final cost certification package in the format prescribed by the Department. As used herein, a complete final cost certification package means a package that meets all of the Department's criteria with all required information and exhibits listed in clauses (i) - (xxxviii) of this subparagraph, and pursuant to the Post Carryover Activities Manual. If any item on this list is determined to be deficient or inconsistent with the cost certification review completed by the Department, a Request for Information (RFI) will be sent to the Development Owner. Failure to respond to the requested information within a thirty (30) day period from the date of request may result in the termination of the cost certification review and request for 8609s and require a new request be submitted with a Cost Certification Extension Fee as described in Subchapter G of this chapter (relating to Fee Schedule, Appeals and Other Provisions). Furthermore, cost certification reviews that remain open for an extended period of time (more than 365 days) will be reported to the EARAC during any related party previous participation review conducted by the Department.

(i) Cost Certification Requirements List

(ii) Owner's Statement of Certification

(iii) Owner Summary & Organization Chart

(iv) Carryover or Determination Notice

(v) Evidence of Nonprofit and CHDO Participation

(vi) Evidence of Historically Underutilized Business (HUB) Participation

(vii) Development Team

(viii) Development Summary with Architect's Certification

(ix) Development Change Documentation

(x) As Built Survey

(xi) Closing Statement

(xii) Title Policy

(xiii) Title Policy Update

(xiv) Placement in Service

(xv) Evidence of Placement in Service

(xvi) Architect's Certification of Completion Date and Date Ready for Occupancy

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

(xviii) Independent Auditor's Report

(xix) Independent Auditor's Report of Bond Financing

(xx) Development Cost Schedule

(xxi) Contractor's Application for Final Payment (G702/G703)

(xxii) Additional Documentation of Offsite Costs

(xxiii) Rent Schedule

(xxiv) Utility Allowances

(xxv) Annual Operating Expenses

(xxvi) 15 Year Rental Housing Operating Pro Forma

(xxvii) Current Operating Statement

(xxviii) Current Rent Roll

(xxix) Summary of Sources and Uses of Funds

(xxx) Financing Narrative

(xxxi) Final Limited Partnership Agreement

(xxxii) Loan Agreements and Promissory Notes

(xxxiii) Architect's Certification of Fair Housing Requirements

(xxxiv) Development Owner Assignment of Individual to Compliance Training

(xxxv) TDHCA Compliance Training Certificate

(xxxvi) Recorded Land Use Restriction Agreement (LURA)

(xxxvii) TDHCA Final Inspection Clearance Letter

(xxxviii) Other Documentation as Required

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

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

(E) met all conditions noted in the Department underwriting report;

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

(G) received all required environmental clearances and met all mitigation requirements. Developments that received HOME funding from the Department will not be issued IRS Forms(s) 8609 until a certification has been received from the Architect or Engineer of record stating that all clearance and mitigation requests have been met; and

(H) completion by the Department of an updated underwriting evaluation in accordance with Subchapter D of this chapter based on the most current information at the time of the review.

§10.403. Direct Loans.

(a) Loan Closing. The loan closing must occur no more than nine (9) months from the date the Commitment or similar document is executed, which may be extended in accordance with the provisions in this subchapter. In preparation for closing any Direct Loan the Development Owner must submit the items described in paragraphs (1) - (7) of this subsection:

(1) documentation of the prior or reasonable assurance of a concurrent closing with any superior lien holders or any other sources of funds determined to be necessary for the long-term financial feasibility of the Development and all due diligence determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department. Where the Department will have a first lien position and the Applicant provides documentation that closing on other sources is reasonably expected to occur within three (3) months, the Executive Director or authorized designee may approve a closing to move forward without the closing on other sources. The Executive Director as the authorized designee of the Department must require a personal guarantee, in form and substance acceptable to the Department, from a Principal of the Development Owner for the interim period;

(2) when Department funds have a first lien position, assurance of completion of the Development in the form of payment and performance bonds in the full amount of the construction contract will be required or equivalent guarantee in the sole determination of the Department. Such assurance of completion will run to the Department as obligee. Development Owners also utilizing the USDA §515 program are exempt from this requirement but must meet the alternative requirements set forth by USDA;

(3) Owner/General Contractor agreement and Owner/ Architect agreement;

(4) survey of the Property that includes a certification to the Department, Development Owner, Title Company, and other lenders;

(5) if layered with Housing Tax Credits, a fully executed limited partnership agreement between the General Partner and the tax credit investor entity (may be provided concurrent with closing);

(6) a revised development cost schedule, sources and uses, operating proforma, planned cost categories for the use of Direct Loan funds, updated written financial commitments/term sheets and any additional budget schedules that have changed since the time of application. If the budget or sources of funds reflect material changes from what was approved by the Board that may affect the financial feasibility of the Development, the Department may request additional documentation to ensure that the Development continues to meet the requirements of Subchapter D of this chapter (relating to Underwriting and Loan Policy);

(7) if required for the Direct Loan, prior to closing, the Development Owner must have received verification of:

(A) environmental clearance;

(B) verification of HUD Site and Neighborhood clearance;

(C) documentation necessary to show compliance with the Uniform Relocation Act and any other relocation requirements that may apply; and

(D) any other documentation that is necessary or prudent to meet program requirements or state or federal law in the sole determination of the Department.

(b) Loan Documents. The Development Owner is required to execute all loan closing documents required by and in form and substance acceptable to the Legal Division including but not limited to a promissory note, deed of trust, construction loan agreement, LURA, HOME contract, Architect and/or licensed engineer certification of understanding to complete environmental mitigation identified in HUD's environmental clearance and by the Real Estate Analysis Division (REA) and assignment and security instruments whereby the Developer, the Development Owner, and/or any Affiliate grants the Department any rights, liens, charges, security interests, ownership interests, mortgages, pledges, hypothecations, or other rights, legally or beneficially, collaterally or directly, to provide for the protection of the Department against any failure to adhere to the program's requirements. Repayment provisions will require repayment on a per unit basis for units that have not been rented to eligible households within eighteen (18) months of project completion; termination and repayment of the HOME award in full will be required for any development that is not completed within four (4) years of the date of funding commitment.

(c) Disbursement of Funds (including developer fees). The Development Owner must comply with the requirements in paragraphs (1) - (9) of this subsection for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Development Owner's compliance with these requirements may be required with a request for disbursement:

(1) except for disbursement requests made for acquisition and closing costs or requests made for soft costs only, a down-date endorsement to the title policy not older than the Architect's certification date on AIA form G702 or sixty (60) calendar days, whichever is later. For release of retainage the down-date endorsement must be dated at least thirty (30) calendar days after the date of the construction completion as certified on the Certificate of Substantial Completion (AIA Form G704);

(2) for hard construction costs, documentation of the total construction costs incurred and costs incurred since the last disbursement of funds must be submitted. Such documentation must be signed by the General Contractor and certified by the Development architect and is generally in the form of an AIA Form G702 or G703;

(3) the Department will require that at least 50 percent of the funds be withheld from the initial disbursement to allow for periodic disbursements as may be necessary to meet federal requirements. For HOME Direct Loans: The initial draw request for the development must be entered no later than ten business days prior to the one year anniversary of the commitment date (as defined in 24 CFR Part 92) or funds may be cancelled in HUD's IDIS system;

(4) if applicable, up to 75 percent of Direct Loan funds may be drawn before providing evidence of Match. Thereafter, each Development Owner must provide evidence of Match in the form of a formal contract or commitment with the vendor clearly delineating the donated portion of the contract price, invoices showing the forgiven amount, or other equally verifiable third party documentation prior to release of the final 25 percent of funds. If funds are requested on the day of closing, an executed formal contract specifying the terms of the Match must be provided;

(5) Developer fee disbursement shall be conditioned upon:

(A) for Developments in which the loan is secured by a first lien deed of trust against the Property, 75 percent shall be disbursed in accordance with percent of construction completed (i.e. 75 percent of the total allowable fee will be multiplied by the percent completion) as documented by the construction contract and as may be verified by an inspection by the Department. The remaining 25 percent shall be disbursed at the time of release of retainage; or

(B) for Developments in which the loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits, developer fees will not be reimbursed by the Department unless the other lenders and syndicator confirm in writing that they do not have an existing or planned agreement to govern the disbursement of developer fees and expect that Department funds shall be used to fund developer fees. Provided this requirement is met, developer fees shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

(C) the Department may reasonably withhold any disbursement of developer fees if it is determined that the Development is not progressing as necessary to meet Contract benchmarks or that cost overruns may put the Department's funds or completion within budget at risk. Once a reasonable alternative that is deemed acceptable by the Department has been provided, disbursement of the remaining fee may occur;

(6) expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure requested. The Department may request the Development Owner make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of Department funds to Development Owner as may be necessary or advisable for compliance with all program requirements. For HOME Direct Loans: Pre-award costs for predevelopment activities, as specified in the loan documents, are allowable only if they were incurred less than 24 months prior to the commitment date (as defined in 24 CFR Part 92) and were associated with the Application Round in which the project was awarded;

(7) table funding requests will not be considered unless:

(A) a "Commitment to a specific local project" as defined in 24 CFR Part 92 has been made, if applicable; and

(B) ten (10) days prior to anticipated closing, all table funding draw documentation has been completed and submitted to the Department;

(8) each Development Owner must request a progress inspection from Department staff once the property passes 25 percent construction completion based on the AIA G702-703. Up to 50 percent of the HOME award will be released prior to receipt of documentation that the progress inspection has occurred;

(9) Following fifty percent construction completion, the remaining HOME funds will be released in accordance with the percentage of construction completion, not to exceed ninety percent of award, at which point funds will be held as retainage until the final draw request. Retainage will be held until all of the items described in subparagraphs (A) - (G) of this paragraph are received:

(A) Certificate of Substantial Completion (AIA Form G704);

(B) A down date endorsement dated at least 30 calendar days after the date of completion on AIA Form G704;

(C) For developments not layered with Housing Tax Credits, a Closed Final Development Inspection Letter from the Department;

(D) For developments subject to the Davis-Bacon Act, evidence from the Senior Labor Standards Specialist that the final wage compliance report was received and approved;

(E) receipt of Certificates of Occupancy for New Construction or a certification of completion from the Development architect for Rehabilitation;

(F) Development completion reports which may include documentation of full compliance with the Uniform Relocation Act, Davis-Bacon Act, Section 3 and any other applicable requirements; and

(G) Certification from Architect or a licensed engineer that all HUD and REA environmental mitigation conditions have been met.

§10.404. Reserve Accounts.

(a) Replacement Reserve Account (§2306.186). The Department will require Development Owners to provide regular maintenance to keep housing sanitary, safe and decent by establishing and maintaining a reserve for replacement account for the Development in accordance with Texas Government Code, §2306.186. The reserve account must be established, in accordance with paragraphs (3), (4), (5), and (6) of this subsection, and maintained through annual deposit, for each Unit in a Development of 25 or more rental units regardless of the amount of rent charged for the Unit. If the Department is processing a request for loan modification or other workout request, and the Development does not have an existing replacement reserve account sufficient to meet future capital expenditure needs of the Development, the Development Owner will be required to establish and maintain a replacement reserve account regardless of the number of units at the Development. The Department shall, through cooperation of its divisions responsible for asset management and compliance, ensure compliance with this section. The duties of the Development Owner under this section cease on the date of a change in ownership of the Development; however, the subsequent Development Owner of the Development is subject to the requirements of this section.

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

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

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

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

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

(B) date on which the Development is demolished;

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

(D) end of the Affordability Period specified by the LURA or the end of the repayment period of the first lien loan.

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

(A) For New Construction Developments, not less than $250 per Unit; or

(B) For Adaptive Reuse, Rehabilitation and Reconstruction Developments, the greater of the amount per Unit per year either established by the information presented in a Property Condition Assessment in conformance with Subchapter D of this chapter (relating to Underwriting and Loan Policy) or $300 per Unit per year.

(4) For all Developments, a Property Condition Assessment ("PCA") will be conducted at appropriate intervals that are consistent with requirements of the First Lien Lender, other than the Department. If the Department is the First Lien Lender, or the First Lien Lender does not require a Third Party PCA, a PCA will be conducted at least once during each five (5) year period beginning with the eleventh (11th) year after the awarding of any financial assistance from the Department.

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

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

(B) compliance with the first lien lender requirements outlined in paragraph (A) of this subsection; and

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

(6) Where there is no First Lien Lender but the allocation of funds by the Department and Texas Government Code, §2306.186 requires that the Department oversee a Reserve Account, the Development Owner shall provide at their sole expense for appointment of an escrow agent acceptable to the Department to act as Bank Trustee as necessary under this section. The Department shall retain the right to replace the escrow agent with another Bank Trustee or act as escrow agent at a cost plus fee payable by the Development Owner due to breach of the escrow agent's responsibilities or otherwise with thirty (30) days prior notice of all parties to the escrow agreement.

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

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

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

(C) money in the Reserve Account:

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

(ii) falls below mandatory deposit levels;

(D) Development Owner fails to make a required deposit;

(E) Development Owner fails to obtain a Third-Party Property Condition Assessment as required under this section; or

(F) Development Owner fails to make necessary repairs in accordance with the third party property condition assessment or §10.621 of this chapter (relating to Property Condition Standards).

(8) Department-Initiated Repairs. The Department or its agent may make repairs to the Development if the Development Owner fails to complete necessary repairs indicated in the submitted Property Condition Assessment or identified by Department physical inspection. Repairs may be deemed necessary if the Development Owner fails to comply with federal, state, and/or local health, safety, or building code requirements. Payment for necessary repairs must be made directly by the Development Owner or through a replacement Reserve Account established for the Development under this section. The Department or its agent will produce a Request for Bids to hire a contractor to complete and oversee necessary repairs. On a case-by-case basis, the Department may determine that the money in the Reserve Account may be used for expenses other than necessary repairs, including property taxes or insurance, if:

(A) Development income before payment of return to Development Owner or deferred developer fee is insufficient to meet operating expense and debt service requirements; and the funds withdrawn from the Reserve Account are replaced as Cash Flow after payment of expenses, but before payment of return to Development Owner or Developer; or

(B) Development income after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is insufficient to fund the mandatory deposit levels; and subsequent deposits to the Reserve Account exceed mandatory deposit levels as Cash Flow after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is available until the Reserve Account has been replenished to the mandatory deposit level less capital expenses to date.

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

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

(c) Operating Reserve Account. At various stages during the application, award process, and during the operating life of a Development, the Department will conduct a financial analysis of the Development's total development costs and operating budgets, including the estimated operating reserve account deposit required. For example, this analysis typically occurs at application and cost certification review. The Department will consider a reasonable operating reserve account deposit in this analysis based on the needs of the Development and requirements of third-party lenders or investors. The amount used in the analysis will be the amount described in the project cost schedule or balance sheet, if it is within the range of two (2) to six (6) months of stabilized operating expenses plus debt service. The Department may consider a greater amount proposed or required by the Department, any superior lien lender, or syndicator, if the detail for such greater amount is reasonable and well documented. Reasonable operating reserves in this chapter do not include capitalized asset management fees, guaranty reserves, or other similar costs. In no instance will operating reserves exceed twelve (12) months of stabilized operating expenses plus debt service (exclusive of transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Operating reserves are generally for the term of the permanent loan. In no instance will operating reserves released within five (5) years be included as a cost.

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

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

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

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

(4) Use of the funds in the Special Reserve Account is determined by a plan that is preapproved by the Department. The Owner must create, update and maintain a plan for the disbursement of funds from the Special Reserve Account. The plan should be established at the time the account is created and updated and submitted for approval by the Department as needed. The plan should consider the needs of the tenants of the property and the existing and anticipated fund account balances such that all of the fund uses provide benefit to tenants. Disbursements from the fund will only be approved by the Department if they are in accordance with the current approved plan.

(e) Other Reserve Accounts. Additional reserve accounts may be recognized by the Department as necessary and required by the Department, superior lien lender or syndicator.

§10.405. Amendments and Extensions.

(a) Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) recording or amendments that do not result in a change to the LURA. (§2306.6712) Regardless of development stage, the Board shall reevaluate a Development that undergoes a substantial change, as identified in paragraph (4) of this subsection at any time after the initial Board approval of the Development. (§2306.6731(b)) The Board may deny an amendment request and subsequently may revoke any Commitment or Determination Notice issued for a Development and for Competitive HTC Applications, and reallocates the credits to other Applicants on the waiting list.

(1) If a proposed modification would alter a Development approved for an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection, the Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in §10.901(13) of this chapter (relating to Fee Schedule) in order to be received and processed by the Department.

(2) Department staff will evaluate the amendment request. The Executive Director may administratively approve all non-material amendments, including those involving changes to the Developer, Guarantor or Person used to meet the experience requirement in §10.204(6) of this chapter (relating to Required Documentation for Application Submission). Amendments considered material pursuant to paragraph (4) of this subsection must be approved by the Board. Amendment requests which require Board approval must be received by the Department at least forty-five (45) calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the fifteenth (15th) day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4))

(3) Amendment requests may be denied if the Board determines that the modification proposed in the amendment:

(A) would materially alter the Development in a negative manner; or

(B) would have adversely affected the selection of the Application in the Application Round.

(4) Material alteration of a Development includes, but is not limited to:

(A) a significant modification of the site plan;

(B) a modification of the number of units or bedroom mix of units;

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

(D) a reduction of 3 percent or more in the square footage of the units or common areas;

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

(F) a modification of the residential density, other than changes under subparagraph (G) of this paragraph which are the result of a change required by local government, of at least 5 percent;

(G) an increase or decrease in the site acreage, other than changes required by local government, of greater than 10 percent from the original site under control and proposed in the Application;

(H) exclusion of any requirements as identified in 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 or Pre-Clearance for Applications); or

(I) any other modification considered significant by the Board.

(5) In evaluating the amendment under this subsection, Department Staff shall consider whether changes to the selection or threshold criteria would have resulted in an equivalent or higher score and if the need for the proposed modification was reasonably foreseeable by the Applicant at the time the Application was submitted or preventable by the Applicant. Amendment requests will be denied if the score would have changed the allocation decision or if the circumstances were reasonably foreseeable and preventable unless good cause is found for the approval of the amendment.

(6) This section shall be administered in a manner that is consistent with §42 of the Code.

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

(A) for amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence must be presented to the Department to support the amendment. In addition, the lender and syndicator must submit written confirmation that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued feasibility of the Development; and

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

(b) Amendments to the LURA. Department staff will evaluate the amendment request and provide the Development Owner an amended LURA for execution and recordation in the county where the Development is located. LURAs will not be amended if the subject Development has any uncorrected issues of noncompliance outside of the Corrective Action Period (other than the provision being amended) unless otherwise approved by the Executive Award Review and Advisory Committee. LURAs will not be amended if the Development Owner owes fees to the Department. The Executive Director or designee may administratively approve all non-material LURA amendments. Board approval is required if a Development Owner requests a reduction in the number of Low-Income Units, a change in the income or rent restrictions, a change in the Target Population, a substantive modification in the scope of tenant services, or a delay in the Right of First Refusal (ROFR) requirements. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Texas Government Code, Chapter 2306, the Fair Housing Act, and, for Tax Exempt Bond Developments, compliance with their trust indenture and corresponding bond issuance documents. An amendment to the LURA is not considered material if the change is the result of a Department work out arrangement as recommended by the Department's Asset Management Division. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraphs (1) - (5) of this subsection must be followed:

(1) the Development Owner must submit a written request accompanied by an amendment fee as identified in §10.901 of this chapter, specifying the requested change, the reason the change is necessary, the good cause for the change and if the necessity for the amendment was reasonably foreseeable at the time of Application;

(2) the Development Owner must supply financial information for the Department to evaluate the financial impact of the change;

(3) the Department may order a Market Study or appraisal to evaluate the request which shall be at the expense of the Development Owner and the Development Owner will remit funds necessary for such report prior to the Department commissioning such report;

(4) the Development Owner must hold a public hearing at least seven (7) business days prior to the Board meeting where the Board will consider their request,. The notice of the hearing and requested change must be provided to each tenant of the Development, the current lender and/or investors, the State Senator and Representative for the district containing the Development, and the chief elected official for the municipality, if located in a municipality, or the county commissioners, if located outside of a municipality; and

(5) ten (10) business days before the public hearing, the Development Owner must submit a draft notice of the hearing for approval by the Department. The Department will create and provide upon request a sample notice and approve or amend the notice within three (3) business days of receipt.

(c) Amendments to Direct Loan Terms. An Applicant may request a change to the terms of a loan. Requests for changes to the loan post closing will be processed as a loan modification and may require additional approval by the Department's Asset Management Division The Executive Director or authorized designee may approve amendments to loan terms as described in paragraphs (1) - (6) of this subsection prior to closing. Board approval is necessary for any other changes prior to closing. A post closing loan modification that is the result of a Department work out arrangement or other condition recommended by the Department's Asset Management Division will not require additional Executive Director or Board approval except where the post closing change could have been anticipated prior to closing as determined by staff:

(1) extensions of up to twelve (12) months to the loan closing date specified in §10.403(a) of this chapter (relating to Direct Loans). An Applicant must document good cause, which may include constraints in arranging a multiple-source closing;

(2) changes to the loan maturity date to accommodate the requirements of other lenders or to maintain parity of term;

(3) extensions of up to six (6) months for the construction completion or loan conversion date based on documentation that the extension is necessary to complete construction and that there is good cause for the extension. Such a request will generally not be approved prior to initial loan closing;

(4) changes to the loan amortization or interest rate that cause the annual repayment amount to decrease less than 20 percent or any changes to the amortization or interest rate that increases the annual repayment amount;

(5) decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development. Increases will generally not be approved unless the Applicant competes for the additional funding under an open NOFA; and

(6) changes to other loan terms or requirements as necessary to facilitate the loan closing without exposing the Department to undue financial risk.

(d) HTC Extensions. Extensions must be requested if the original deadline associated with carryover, the 10 Percent Test (including submission and expenditure deadlines), or cost certification requirements will not be met. Extension requests submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee as described in §10.901 of this chapter. Any extension request submitted fewer than thirty (30) days in advance of the applicable deadline or after the applicable deadline will not be processed unless accompanied by the applicable fee. Extension requests will be approved by the Executive Director or Designee, unless, at staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request must specify a requested extension date and the reason why such an extension is required. If the Development Owner is requesting an extension to the Carryover submission or 10 percent Test deadline(s), a point deduction evaluation will be completed in accordance with Texas Government Code, §2306.6710(b)(2), and §11.9(f) of this title (relating to Competitive HTC Selection Criteria). Therefore, the Development Owner must clearly describe in their request for an extension how the need for the extension was beyond the reasonable control of the Applicant/Development Owner and could not have been reasonably anticipated. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued.

§10.406. Ownership Transfers (§2306.6713).

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(b) Requirement. Department approval must be requested for any new member to join in the ownership of a Development. Exceptions include changes to the investment limited partner, non-controlling limited partner, or other partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(c) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(d) Non-Profit Organizations. If the ownership transfer request is to replace a non-profit organization within the Development ownership entity, the replacement non-profit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a non-profit organization that complies with the LURA.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it determines to sell its ownership interest after the issuance of 8609s, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

(1) the selling HUB is acting of its own volition;

(2) the participation by the HUB has been substantive and meaningful, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers.

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation includes but is not limited to:

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

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

(4) evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least thirty (30) calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired.

(g) Within five (5) business days after the date the Department receives all necessary information under this section, staff shall initiate a qualifications review of a transferee, in accordance with §1.5 of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter.

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

(1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(i) Penalties. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

§10.407. Right of First Refusal.

(a) General. This section applies to LURAs that provided an incentive for Development Owners to offer a Right of First Refusal (ROFR) to a Qualified ROFR Organization which is defined as a qualified nonprofit organization under §42(h)(5)(c)of the Code or tenant organizations. The Development Owner may market the Property for sale and sell the Property to a Qualified ROFR Organization without going through the ROFR process outlined in this section. The purpose of this section is to provide administrative procedures and guidance on the process and valuation of properties under the LURA. All requests for ROFR submitted to the Department, regardless of existing regulations, must adhere to this process. A ROFR request must be made in accordance with the LURA for the Development. If there is a conflict between the Development's LURA and this subchapter, requirements in the LURA supersede the subchapter. If a LURA includes the ROFR provision, the Development Owner may not request a Preliminary Qualified Contract until the requirements outlined in this section have been satisfied. The Department reviews and approves all ownership transfers, including transfers to a nonprofit or tenant organization through a ROFR. Properties subject to a LURA may not be transferred to an entity that is considered an ineligible entity under the Department's most recent Qualified Allocation Plan. In addition, ownership transfers to a Qualified ROFR Organization during the ROFR period are subject to §1.5 of this title (relating to Previous Participation Reviews). A Qualified ROFR Organization that wishes to pursue the acquisition of a Development through a ROFR but that is not approved for transfer under the Previous Participation Review, pursuant to §1.5 of this title, may appeal the denial to the Board. Satisfying the ROFR requirement does not terminate the LURA or the ongoing application of the ROFR requirement to any subsequent Development Owner.

(b) Right of First Refusal Offer Price. There are two general expectations of the ROFR offer or sale price identified in the outstanding LURAs. The descriptions in paragraphs (1) and (2) of this subsection do not alter the requirements or definitions included in the LURA but provide further clarification as applicable:

(1) Fair Market Value is established using either a current appraisal (completed within three months prior to the ROFR request and in accordance with §10.304 of this chapter (relating to Appraisal Rules and Guidelines)) of the Property or an executed purchase offer that the Development Owner would like to accept. The purchase offer must contain specific language that the offer is conditioned upon satisfaction of the ROFR requirement. If a subsequent ROFR request is made within six months of the previously approved ROFR posting, the lesser of the prior ROFR posted value or new appraisal/purchase contract amount must be used in establishing Fair Market Value;

(2) Minimum Purchase Price, pursuant to §42(i)(7)(B) of the Code, is the sum of:

(A) the principal amount of outstanding indebtedness secured by the project (other than indebtedness incurred within the five (5)-year period immediately preceding the date of said notice); and

(B) all federal, state, and local taxes incurred or payable by the Development Owner as a consequence of such sale. If the Property has a minimum Applicable Fraction of less than 1, the offer must take this into account by multiplying the purchase price by the applicable fraction and the fair market value of the non-Low-Income Units.

(c) Required Documentation. Upon establishing the value of the Property, the ROFR process is the same for all types of LURAs. To proceed with the ROFR request, submit all documents listed in paragraphs (1) - (12) of this subsection:

(1) upon the Development Owner's determination to sell the Development to an entity other than a Qualified ROFR Organization, the Development Owner shall provide a notice of intent to the Department and to such other parties as the Department may direct at that time. If the LURA identifies a Qualified ROFR Organization that has a limited priority in exercising a ROFR to purchase the Development, the Development Owner must first offer the Property to this entity. If the nonprofit entity does not purchase the Property, this denial of offer must be in writing and submitted to the Department along with the notice of intent to sell the Property and the ROFR Fee. The Department will determine from this documentation whether the ROFR requirement has been met. In the event that the organization is not operating or in existence when the ROFR is to be made, the ROFR must be provided to another Qualified ROFR Organization that is not related to or affiliated with the current Development Owner. Upon review and approval of the notice of intent and denial of offer letter, the Department will notify the Development Owner in writing whether the ROFR requirement has been satisfied or not. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to another buyer at or above the posted price;

(2) documentation verifying the ROFR offer price of the property:

(A) if the Development Owner receives an offer to purchase the Property from any buyer other than a Qualified ROFR Organization that the Development Owner would like to accept, the Development Owner may execute a sales contract, conditioned upon satisfaction of the ROFR requirement, and submit the executed sales contract to establish fair market value; or

(B) if the Development Owner of the Property chooses to establish fair market value using an appraisal, the Development Owner must submit an appraisal of the Property completed during the last three (3) months prior to the date of submission of the ROFR request, establishing a value for the Property in compliance with Subchapter D of this chapter (relating to Underwriting and Loan Policy) in effect at the time of the request. The appraisal should take into account the existing and continuing requirements to operate the Property under the LURA and any other restrictions that may exist. Department staff will review all materials within thirty (30) calendar days of receipt. If, after the review, the Department does not agree with the fair market value proposed in the Development Owner's appraisal, the Department may order another appraisal at the Development Owner's expense; or

(C) if the LURA requires valuation through the Minimum Purchase Price calculation, submit documentation verifying the calculation of the Minimum Purchase Price as described in subsection (b)(2) of this section regardless of any existing offer or appraised value;

(3) description of the Property, including all amenities and current zoning requirements;

(4) copies of all documents imposing income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Property;

(5) copy of the most current title report, commitment or policy in the Development Owner's possession;

(6) the most recent Physical Needs Assessment, pursuant to Texas Government Code, §2306.186(e), conducted by a Third-Party and in the Development Owner's possession;

(7) copy of the monthly operating statements, including income statements and balance sheets for the Property for the most recent

twelve (12) consecutive months (financial statements should identify amounts held in reserves);

(8) the three (3) most recent consecutive audited annual operating statements, if available;

(9) detailed set of photographs of the Property, including interior and exterior of representative units and buildings, and the Property's grounds (including digital photographs that may be easily displayed on the Department's website);

(10) current and complete rent roll for the entire Property;

(11) if any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases; and

(12) ROFR fee as identified in §10.901 of this chapter (relating to Fee Schedule).

(d) Process. Within thirty (30) calendar days of receipt of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies. Once the deficiencies are resolved and the Development Owner and Department come to an agreement on the ROFR offer price of the Property, the Department will list the Property for sale on the Department's website and contact entities on the nonprofit buyer list maintained by the Department to inform them of the availability of the Property at the agreed upon ROFR offer price as determined under this section. The Department will notify the Development Owner when the Property has been listed and of any inquiries or offers generated by such listing. If the Department or Development Owner receives offers to purchase the Property from more than one Qualified ROFR Organization, the Development Owner may accept back up offers. To satisfy the ROFR requirement, the Development Owner may sell the Property to the Qualified ROFR Organization selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department. The period of time required for offering the property at the ROFR offer price is based upon the period identified in the LURA and clarified in paragraphs (1) - (3) of this subsection:

(1) if the LURA requires a ninety (90) day ROFR posting period, within ninety (90) days from the date listed on the website, the process as identified in subparagraphs (A) - (D) of this paragraph shall be followed:

(A) if a bona fide offer from a qualified ROFR organization is received at or above the posted ROFR offer price, and the Development Owner does not accept the offer, the ROFR requirement will not be satisfied;

(B) if a bona fide offer from a qualified ROFR organization is received at or above the posted ROFR offer price and the Development Owner accepts the offer, and the nonprofit fails to close the purchase, if the failure is determined to not be the fault of the Development Owner, the ROFR requirement will be deemed met so long as no other acceptable offers have been timely received. If the proposed Development Owner is subsequently not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to §1.5 of this title, the ROFR requirement will be deemed met so long as no other acceptable offers have been timely received;

(C) if an offer from a nonprofit is received at a price below the posted ROFR offer price, the Development Owner is not required to accept the offer, and the ROFR requirement will be deemed met if no other offers at or above the price are received during the ninety (90) day period;

(D) if no bona fide offers are received during the ninety (90) day period, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to a for-profit buyer at or above the posted price;

(2) if the LURA requires a two year ROFR posting period, and the Development Owner intends to sell the Property upon expiration of the Compliance Period, the notice of intent described in this section may be submitted within two (2) years before the expiration of the Compliance Period, as required by Texas Government Code, §2306.6726. If the Development Owner determines that it will sell the Development at some point later than the end of the Compliance Period, the notice of intent shall be given within two (2) years before the date upon which the Development Owner intends to sell the Development in order for the two year ROFR posting period to be completed prior to intended sale. The two (2) year period referenced in this paragraph begins when the Department has received and approved all documentation required under subsection (c)(1) - (12) of this section. During the two (2) years following the notice of intent and in order to satisfy the ROFR requirement of the LURA, the Development Owner may enter into an agreement to sell the Development only with the parties listed, and in order of priority:

(A) during the first six (6) month period after notice of intent, only with a Qualified Nonprofit Organization that is also a Community Housing Development Organization, as defined in the HOME Final Rule and is approved by the Department;

(B) during the second six (6) month period after notice of intent, only with a Qualified Nonprofit Organization or a tenant organization;

(C) during the second year after notice of intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a tenant organization approved by the Department;

(D) if, during the two (2) year period, the Development Owner shall receive an offer to purchase the Development at or above the Minimum Purchase Price from one of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organization), the Development Owner may sell the Development to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at or above the Minimum Purchase Price from one or more of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organizations), the Development Owner may sell the Development at or above the Minimum Purchase Price to the organization selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department; and

(E) upon expiration of the two (2) year period, if no Minimum Purchase Price offers were received from a Qualified ROFR Organization or by the Department, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to a for-profit buyer at or above the minimum purchase price.

(3) If the LURA does not specify a required ROFR posting timeframe, or, in the sole determination of the Department, is unclear on the required ROFR posting timeframe, and the required ROFR value is determined by the Minimum Purchase Price method, the Development Owner must adhere to the timeframe described in Texas Government Code, §2306.6726.

(e) Closing the Transaction. The Department shall have the right to enforce the Development Owner's obligation to sell the Development as herein contemplated by obtaining a power-of-attorney from the Development Owner to execute such a sale or by obtaining an order for specific performance of such obligation or by such other means or remedy as shall be, in the Department's discretion, appropriate.

(1) Prior to closing a sale of the Property, the Development Owner must obtain Department approval of the transfer through the ownership transfer process in accordance with §10.406 of this chapter (relating to Ownership Transfers (§2306.6713)). The request should include, among other required transfer documents outlined in the Post Carryover Activities Manual, the final settlement statement and final sales contract with all amendments. If there is no material change in the sales price or terms and conditions of the sale, as approved at the conclusion of the ROFR process, and there are no issues identified during the Ownership Transfer review process, the Department will notify the Development Owner in writing that the transfer is approved.

(2) If the closing price is less than the amount identified in the sales contract or appraisal that was submitted in accordance with subsection (c)(2)(A) - (C) of this section or the terms and conditions of the sale change materially, in the Department's sole determination, the Development Owner must go through the ROFR process again.

(3) Following notice that the ROFR requirement has been met, if the Development Owner fails to proceed with a request for a Qualified Contract or sell the Property to a for-profit entity within twenty-four (24) months of the Department's written approval, the Development Owner must again offer the Property to nonprofits in accordance with the applicable section prior to any transfer. If the Department determines that the ROFR requirement has not been met during the ROFR posting period, the Owner may not re-post under this provision at a ROFR price that is higher than the originally posted ROFR price until twenty-four (24) months has expired from the Department's written denial. The Development Owner may market the Property for sale and sell the Property to a Qualified ROFR Organization during this twenty-four month period.

(f) Appeals. A Development Owner may appeal a staff decision in accordance with §10.902 of this chapter (relating to the Appeals Process (§2306.0321; §2306.6715)). The appeal may include:

(1) the best interests of the residents of the Development;

(2) the impact the decision would have on other Developments in the Department's portfolio;

(3) the source of the data used as the basis for the Development Owner's appeal;

(4) the rights of nonprofits under the ROFR;

(5) any offers from an eligible nonprofit to purchase the Development; and

(6) other factors as deemed relevant by the Executive Director.

§10.408. Qualified Contract Requirements.

(a) General. Pursuant to §42(h)(6) of the Code, after the end of the 14th year of the Compliance Period, the Development Owner of a Development utilizing Housing Tax Credits can request that the allocating agency find a buyer at the Qualified Contract Price. If a buyer cannot be located within one (1) year, the Extended Use Period will expire. This section provides the procedures for the submittal and review of Qualified Contract Request.

(b) Eligibility. Development Owners who received an award of credits on or after January 1, 2002 are not eligible to request a Qualified Contract prior to the thirty (30) year anniversary of the date the property was placed in service. (§2306.185) Unless otherwise stated in the LURA, Development Owners awarded credits prior to 2002 may submit a Qualified Contract Request at any time after the end of the year proceeding the last year of the Initial Affordability Period, following the Department's determination that the Development Owner is eligible. The Initial Affordability Period starts concurrently with the credit period, which begins at placement-in-service or is deferred until the beginning of the next tax year, if there is an election. Unless the Development Owner has elected an Initial Affordability Period longer than the Compliance Period, as described in the LURA, this can commence at any time after the end of the 14th year of the Compliance Period. References in this section to actions which can occur after the 14th year of the Compliance Period shall refer, as applicable, to the year preceding the last year of the Initial Affordability Period, if the Development Owner elected an Initial Affordability Period longer than the Compliance Period.

(1) If there are multiple buildings placed in service in different years, the end of the Initial Affordability Period will be based upon the date the last building placed in service. For example, if five buildings in the Development began their credit periods in 1990 and one began in 1991, the 15th year would be 2005.

(2) If a Development received an allocation in multiple years, the end of the Initial Affordability Period will be based upon the last year of a multiple allocation. For example, if a Development received its first allocation in 1990 and a subsequent allocation and began the credit period in 1992, the 15th year would be 2006.

(c) Preliminary Qualified Contract Request. All eligible Development Owners must file a Preliminary Qualified Contract Request.

(1) In addition to determining the basic eligibility described in subsection (b) of this section, the pre-request will be used to determine that:

(A) the Property does not have any uncorrected issues of noncompliance outside the Corrective Action Period;

(B) there is a Right of First Refusal (ROFR) connected to the Property that has been satisfied; (C) the Compliance Period has not been extended in the LURA and, if it has, the Development Owner is eligible to file a pre-request as described in paragraph (2) of this subsection; and

(2) In order to assess the validity of the pre-request, the Development Owner must submit:

(A) Preliminary Request Form;

(B) Qualified Contract Pre-Request fee as outlined in §10.901 of this chapter (relating to Fee Schedule);

(C) copy of all regulatory agreements or LURAs associated with the property (non-TDHCA);

(D) local code compliance report, TDHCA UPCS Inspection Report, or HUD-certified REAC or UPCS inspection within the last twelve (12) months; and

(E) a copy of the most recent property condition assessment of the property consistent with Subchapter D of this chapter and in accordance with the requirement described in Texas Government Code, §2306.186(e).

(3) The pre-request will not bind the Development Owner to submit a Request and does not start the One (1) Year Period (1YP). A review of the pre-request will be conducted by the Department within ninety (90) days of receipt of all documents and fees described in paragraph (2) of this subsection. If the Department determines that this

stage is satisfied, a letter will be sent to the Development Owner stating that they are eligible to submit a Qualified Contract (QC) Request.

(d) Qualified Contract Request. A Development Owner may file a QC Request anytime after written approval is received from the Department verifying that the Development Owner is eligible to submit the Request.

(1) Documentation that must be submitted with a Request is outlined in subparagraphs (A) - (P) of this paragraph:

(A) a completed application and certification;

(B) the Qualified Contract price calculation worksheets completed by a Third-Party certified public accountant (CPA). The CPA shall certify that they have reviewed annual partnership tax returns for all years of operation, loan documents for all secured debt, and partnership agreements. They shall also certify that they are not being compensated for the assignment based upon a predetermined outcome;

(C) a thorough description of the Development, including all amenities;

(D) a description of all income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Development;

(E) a current title report;

(F) a current appraisal with the effective date within three months prior to the date of the QC Request and consistent with Subchapter D of this chapter (relating to Underwriting and Loan Policy);

(G) a current Phase I Environmental Site Assessment (Phase II if necessary) with the effective date within six months of the date of the QC Request and consistent with Subchapter D of this chapter;

(H) a copy of the most recent property condition assessment of the property, if different from the assessment submitted during the preliminary qualified contract request, consistent with Subchapter D of this chapter and in accordance with the requirement described in Texas Government Code, §2306.186(e);

(I) a copy of the monthly operating statements for the Development for the most recent twelve (12) consecutive months;

(J) the three most recent consecutive annual operating statements;

(K) a detailed set of photographs of the development, including interior and exterior of representative units and buildings, and the property's grounds (including digital photographs that may be easily displayed on the Department's website);

(L) a current and complete rent roll for the entire Development;

(M) a certification that all tenants in the Development have been notified in writing of the request for a Qualified Contract. A copy of the letter used for the notification must also be included;

(N) if any portion of the land or improvements is leased, copies of the leases;

(O) the Qualified Contract Fee as identified in §10.901 of this chapter; and

(P) additional information deemed necessary by the Department.

(2) Unless otherwise directed by the Department pursuant to subsection (g) of this section, the Development Owner shall contract with a broker to market and sell the Property. The Department may, at its sole discretion, notify the Owner that the selected Broker is not approved by the Department. The fee for this service will be paid by the seller, not to exceed 6 percent of the QC Price.

(3) Within ninety (90) days of the submission of a complete Request, the Department will notify the Development Owner in writing of the acceptance or rejection of the Development Owner's QC Price calculation. The Department will have one (1) year from the date of the acceptance letter to find a Qualified Purchaser and present a QC. The Department's rejection of the Development Owner's QC Price calculation will be processed in accordance with subsection (e) of this section and the 1YP will commence as provided therein.

(e) Determination of Qualified Contract Price. The QC Price calculation is not the same as the Minimum Purchase Price calculation for the ROFR. The CPA contracted by the Development Owner will determine the QC Price in accordance with §42(h)(6)(F) of the Code taking the following into account:

(1) distributions to the Development Owner of any and all cash flow, including incentive management fees and reserve balance distributions or future anticipated distributions, but excluding payments of any eligible deferred developer fee. These distributions can only be confirmed by a review of all prior year tax returns for the Development;

(2) all equity contributions will be adjusted based upon the lesser of the consumer price index or 5 percent for each year, from the end of the year of the contribution to the end of year fourteen or the end of the year of the request for a QC Price if requested at the end of the year or the year prior if the request is made earlier than the last year of the month; and

(3) these guidelines are subject to change based upon future IRS Rulings and/or guidance on the determination of Development Owner distributions, equity contributions and/or any other element of the QC Price.

(f) Appeal of Qualified Contract Price. The Department reserves the right, at any time, to request additional information to document the QC Price calculation or other information submitted. If the documentation does not support the price indicated by the CPA hired by the Development Owner, the Department may engage its own CPA to perform a QC Price calculation and the cost of such service will be paid for by the Development Owner. If a Development Owner disagrees with the QC Price calculated by the Department, a Development Owner may appeal in writing. A meeting will be arranged with representatives of the Development Owner, the Department and the CPA contracted by the Department to attempt to resolve the discrepancy. The 1YP will not begin until the Department and Development Owner have agreed to the QC Price in writing. Further appeals can be submitted in accordance with §10.902 of this title (relating to Appeals Process (§2306.0321; §2306.6715)).

(g) Marketing of Property. By submitting a Request, the Development Owner grants the Department the authority to market the Development and provide Development information to interested parties. Development information will consist of pictures of the Development, location, amenities, number of Units, age of building, etc. Development Owner contact information will also be provided to interested parties. The Development Owner is responsible for providing staff to assist with site visits and inspections. Marketing of the Development will continue until such time that a Qualified Contract is presented or the 1YP has expired. Notwithstanding subsection (d)(2) of this section, the Department reserves the right to contract directly with a Third Party in marketing the Development. Cost of such service, including a broker's fee not to exceed 6 percent, will be paid for by the existing

Development Owner. The Department must have continuous cooperation from the Development Owner. Lack of cooperation will cause the process to cease and the Development Owner will be required to comply with requirements of the LURA for the remainder of the Extended Use Period. A prospective purchaser must complete all requirements of an ownership transfer request and be approved by the Department prior to closing on the purchase. The Department will assess if the prospective purchaser is a Qualified Purchaser during the Ownership Transfer review process. Responsibilities of the Development Owner include but are not limited to the items described in paragraphs (1) - (3) of this subsection. The Development Owner must:

(1) allow access to the Property and tenant files;

(2) keep the Department informed of potential purchasers; and

(3) notify the Department of any offers to purchase.

(h) Presentation of a Qualified Contract. If the Department finds a Qualified Purchaser willing to present an offer to purchase the property for an amount at or above the QC Price, the Development Owner may accept the offer and enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase. If the Development Owner chooses not to accept the QC offer that the Department presents, the QC request will be closed and the possibility of terminating the Extended Use Period through the Qualified Contract process is eliminated; the Property remains bound by the provisions of the LURA. If the Development Owner decides to sell the development for the QC Price pursuant to a QC, the consummation of such a sale is not required for the LURA to continue to bind the Development for the remainder of the Extended Use Period.

(1) The Department will attempt to procure a QC only once during the Extended Use Period. If the transaction closes under the contract, the new Development Owner will be required to fulfill the requirements of the LURA for the remainder of the Extended Use Period.

(2) If the Department fails to present a QC before the end of the 1YP, the Department will file a release of the LURA and the Development will no longer be restricted to low-income requirements and compliance. However, in accordance with §42(h)(6)(E)(ii) of the Code, for a three (3) year period commencing on the termination of the Extended Use Period, the Development Owner may not evict or displace tenants of Low-Income Units for reasons other than good cause and will not be permitted to increase rents beyond the maximum tax credit rents. Additionally, the Development Owner should submit to the Department a request to terminate the LURA and evidence, in the form of a signed certification and a copy of the letter, to be approved by the Department, that the tenants in the Development have been notified in writing that the LURA will be terminated and have been informed of their protections during the three (3) year time frame.

(3) Prior to the Department filing a release of the LURA, the Development Owner must correct all instances of noncompliance at the Property.

(i) Compliance Monitoring during Extended Use Period. For Developments that continue to be bound by the LURA and remain affordable after the end of the Compliance Period, the Department will monitor in accordance with the Extended Use Period Compliance Policy in Subchapter F of this chapter (relating to 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 8, 2014.

TRD-201404293
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 19, 2014
For further information, please call: (512) 475-3959

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SUBCHAPTER F. COMPLIANCE MONITORING

10 TAC §§10.601, 10.607, 10.609, 10.612 - 10.614, 10.618, 10.620, 10.624

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 10, Subchapter F, §10.601, concerning Compliance Monitoring Objectives; §10.607, concerning Reporting Requirements; §10.609, concerning Notices to the Department; §10.612, concerning Tenant File Requirements; §10.613, concerning Lease Requirements; §10.614, concerning Utility Allowances; §10.618, concerning Onsite Monitoring; §10.620, concerning Monitoring for Non-Profit Participation or HUB Participation; and §10.624, concerning Events of Noncompliance. The purpose for each amendment is described below.

10 TAC §10.601, concerning Compliance Monitoring Objectives. The purpose of this amendment is to add the Section 811 PRA Program to the eligibly monitoring activities.

10 TAC §10.607, concerning Reporting Requirements. The purpose of this amendment is to align the date by which Owners must sign up to access the Compliance Monitoring and Tracking System (CMTS) with other programmatic deadlines and to bifurcate the financial reporting requirements, handled by the Asset Management Division, from the program reporting requirements handled by the Compliance Division.

10 TAC §10.609, concerning Notices to the Department. The purpose of this amendment is to require owners to update the property name in CMTS when it changes and to use the name known to the public. Please note, only paragraph (5) is being amended, but the rule in its entirety is shown below for context.

10 TAC §10.612, concerning Tenant File Requirements. The purpose of this amendment is to clarify when the annual data collection required in subsection (b)(1) is due and to remove the requirement to complete the Fair Housing Disclosure Notice prescribed for in subsection (a)(4).

10 TAC §10.613, concerning Lease Requirements. The purpose of this amendment is to remove the amenity notice described in subsection (k) and replace the requirement with a brochure that the Department will make available: *A Tenant Rights and Resources Guide for TDHCA Monitored Rental Properties.* This brochure will also include information previously found in the Fair Housing Disclosure Notice. The brochure will be electronic and available for download on the Department's website and the Owner will be able to customize it with the required amenities and services.

10 TAC §10.614, concerning Utility Allowances. The purpose of this amendment is to provide clarity and guidance regard-

ing common mistakes identified in the utility allowance review process.

10 TAC §10.618, concerning Onsite Monitoring. The purpose of this amendment is to clarify the monitoring schedule for HTC Developments that have completed the 15-year Federal Compliance Period.

10 TAC §10.620, concerning Monitoring for Non-Profit Participation or HUB Participation. The purpose of this amendment is to remove the requirement for an Owner to certify to compliance of the Non-Profit and/or HUB requirement in the Annual Owner's Compliance Report (AOCR). This information is no longer included in the AOCR as it often was addressed incorrectly. Furthermore, this provision is now being closely monitored at the time of an onsite review, which is a better tool for ensuring compliance. Please note, only subsection (b) is being amended, but the rule in its entirety is shown below for context.

10 TAC §10.624, concerning Events of Noncompliance. The purpose of this amendment is to add a finding of noncompliance that can be assessed if the Owner fails to maintain accurate and current information in CMTS. The Compliance Division and members of the public rely on this information and, without consequence, it is difficult to ensure owners maintain accurate records.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amended sections are in effect, enforcing or administering the amended sections do not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also 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 the amended sections will be improved compliance with federal and state requirements. There will not be any additional new economic cost to individuals required to comply.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will not be any additional economic effect on small or micro-businesses based on these amendments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014, through October 20, 2014 to receive input on the proposed amendment. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Stephanie Naquin, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-2330. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendments affect no other code, article, or statute.

§10.601. Compliance Monitoring Objectives and Applicability.

(a) (No change.)

(b) This subchapter applies to the monitoring of affordable rental housing under the programs described in paragraphs (1) - (8) [~~(7)~~] of this subsection:

(1) The Housing Tax Credit Program (HTC);

(2) The HOME Investment Partnerships Program (HOME);

(3) The Tax Exempt Bond Program (Bond);

(4) The Housing Trust Fund Program (HTF);

(5) The Tax Credit Assistance Program (TCAP);

(6) The Tax Credit Exchange Program (Exchange); [~~and~~]

(7) The Neighborhood Stabilization Program (NSP); and[~~.~~]

(8) Section 811 Project Rental Assistance (PRA) Program.

(c) - (e) (No change.)

§10.607. Reporting Requirements.

(a) The Department requires reports to be submitted electronically through the Department's web-based Compliance Monitoring and Tracking System (CMTS) and in the format prescribed by the Department. The Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms must be filed for: [~~no later than September 1st of the year following the award. The Department will provide general instruction regarding the electronic transfer of data.~~]

(1) 9% Housing Tax Credit Developments - no later than the date prescribed in §10.402(g) of this chapter relating to the 10 Percent Test;

(2) 4% Housing Tax Credit Developments - no later than the date prescribed in §10.402(e) of this chapter (relating to Post Bond Closing Documentation Requirements); or

(3) For all other multifamily developments, no later than September 1st of the year following the award.

(b) Each Development is required to submit an Annual Owner's Compliance Report (AOCR). Depending on the Development, some or all of the Report must be submitted. The first AOCR is due the second year following the award in accordance with the deadlines set out in subsection (e) [~~(d)~~] of this section. Example 607(1): A Development was allocated Housing Tax Credits in July 2011. The first report is due April 30, 2013, even if the Development has not yet commenced leasing activities.

(c) The AOCR is comprised of four [~~five~~] parts:

(1) Part A "Owner's Certification of Program Compliance." All Owners must annually certify compliance with applicable program requirements. The AOCR Part A shall include answers to all questions required by the U. S. Department of the Treasury to be addressed, including those required by Treasury Regulation 1.42-5(b)(1) or the applicable program rules. HTC Developments during their Compliance Period will also be required to provide the contact information of the syndicator in the Annual Owner's Compliance Report;

(2) Part B "Unit Status Report." All Developments must annually report and certify the information related to individual household income, rent, certification dates and other necessary data to ensure compliance with applicable program regulations. In addition, Owners are required to report on the race and ethnicity, family composition, age, use of rental assistance, disability status, and monthly rental payments of individuals and families applying for and receiving assistance or if the household elects not to disclose the information, such election;

(3) Part C "Housing for Persons with Disabilities." The Department is required to establish a system that requires Owners of state or federally assisted housing Developments with 20 or more housing Units to report information regarding housing Units designed for per-

sons with disabilities. The certified answers to the questions on Part C satisfy this requirement; and,

[(4) Part D "Owner's Financial Certification." Developments funded by the Department must annually provide and certify the data requested in the Owner's Financial Certification; and]

(4) [(5)] Part D [E] "Form 8703." Tax exempt bond properties must file Form 8703 each calendar year of the qualified project period. The form is due to the IRS by March 31 after the close of the calendar year for which the certification is made. The Department requires Tax Exempt Bond Development Owners to submit a copy of the filed Form 8703 for the preceding calendar year.

(d) The owner is required to report certain financial information to the Department electronically through CMTS. If supplemental information is required it must be uploaded to the Development's CMTS account.

(1) Developments funded with Exchange or TCAP must also submit a "Quarterly Owner's Financial Certification" and these must be submitted in January, April, July, and October on the 10th day of the month.

(2) Developments funded with Exchange or TCAP must also submit a "Quarterly Owner's Financial Certification" and these must be submitted in January, April, July, and October on the 10th day of the month.

(e) [(d)] Parts A, B, C, and D [and E] of the Annual Owner's Compliance Report and the Annual Owner's Financial Certification must be provided to the Department no later than April 30th of each year, reporting data current as of December 31st of the previous year (the reporting year).

(f) [(e)] Periodic Unit Status Reports. All Developments must submit a Quarterly Unit Status report to the Department through the Compliance Monitoring and Tracking System. Quarterly reports are due in January, April, July, and October on the 10th day of the month. The report must report occupancy as of the last day of the previous month for the reporting period. For example, the report due October 10th should report occupancy as of September 30th of the preceding month. The first quarterly report is due on the first quarterly reporting date after leasing activity commences.

(g) [(f)] Owners are encouraged to continuously maintain current resident data in the Department's CMTS. Under certain circumstances, such as in the event of a natural disaster, the Department may alter the reporting schedule and require all Developments to provide current occupancy data through CMTS.

(h) [(g)] All rental Developments funded or administered by the Department will be required to submit a current Unit Status Report prior to an onsite monitoring visit.

(i) [(h)] Exchange developments must submit IRS Form(s) 8609 with lines 7, 8(b), 9(b), 10(a), 10(c), and 10(d) completed thirty (30) days after the Department issues the executed form(s). If an Owner elects to group buildings together into one or more multiple building projects, the owner must attach a statement identifying the buildings in the project. An owner may request to change the election made on line 8(b) only once during the Compliance Period. The request will be treated as non-material amendment, subject to the fee described in §10.901 of this chapter (relating to Fee Schedule) and the process described in §10.405 of this chapter (relating to Amendments and Extensions).

§10.609. Notices to the Department.

If any of the events described in paragraphs (1) - (5) of this section occur, written notice must be provided to the Department within the respective timeframes:

(1) - (4) (No change.)

(5) Within ten (10) days of a change in the contact information (including contact persons, physical addresses, mailing addresses, email addresses, [and/or] phone numbers, and/or the name of the property as know by the public) for the Ownership entity, management company, and/or Development the Department's Compliance Monitoring and Tracking System must be updated.

§10.612. Tenant File Requirements.

(a) At the time of program designation as a low-income household, typically at initial occupancy, Owners must create and maintain a file that at a minimum contains:

(1) A Department approved Income Certification form signed by all adults. At the time of program designation as a low-income household, Owners must certify and document household income. In general, all low-income households must be certified prior to move in. The Department requires the use of the TDHCA Income Certification form, unless the property also participates in the Rural Development or a Project Based HUD Program, in which case, the other program's Income Certification form will be accepted;

(2) Documentation to support the Income Certification form including, but not limited to, applications, first hand or third party verification of income and assets, and documentation of student status (if applicable). The Department permits Owners to use check stubs or other firsthand documentation of income and assets provided by the applicant or household in lieu of third party verification forms. It is not necessary to first attempt to obtain a third party verification form. Owners should scrutinize these documents to identify and address any obvious attempts at forgery, alteration, or generation of falsified documents;

(3) A lease with all necessary addendums to ensure that compliance with applicable federal regulations and §10.613 of this chapter (relating to Lease Requirements).[; and]

[(4) The Department's Fair Housing Disclosure Notice form. This notice must be presented to the household at the time of application for occupancy and must be executed no more than one hundred twenty (120) days prior to the effective date of the lease. This requirement pertains to all households taking initial occupancy of a low-income unit on a Development administered by the Department including households transferring within the same Development. If the household is not provided this notice prior to move in or transfer, the Department will consider the event corrected if the Fair Housing Disclosure Notice is provided to the household no more than one hundred twenty (120) days and no less than thirty (30) days prior to the date that the household is legally obligated to provide written notice of their intention to terminate or renew their current lease.]

(b) Annually thereafter on the anniversary date of the household's move in or initial designation:

(1) Throughout the Affordability Period, all Owners of Housing Tax Credit, TCAP and Exchange Developments must collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status, rental amounts and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form or the Income Certification form or HUD Income Certification form or USDA Income Certification form. Example 612(1): The household moved into the Project on May 15, 2013. The information must be collected within 120 days of May 15th every year thereafter.

(2) During the Compliance Period for all Housing Tax Credit, TCAP, and Exchange Developments and throughout the affordability period for all Bond developments and HOME Developments committed funds after August 23, 2013, Owners must collect and maintain current student status data for each low-income household. This information must be collected within 120 days before the anniversary of the effective date of the original student verification and[. ~~This information~~] can be collected on the Department's Annual Eligibility Certification or the Department's Certification of Student Eligibility form or the Department's Income Certification form. Throughout the Compliance Period for HTC, TCAP, and Exchange developments, low-income households comprised entirely of full-time students must qualify for a HTC program exception, and supporting documentation must be maintained in the household's file. For Bond developments, if the household is not an eligible student household, it may be possible to re-designate the full-time student household to an Eligible Tenant (ET). For HOME Developments committed funds after August 23, 2013, an individual does not qualify as a low-income or very low-income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR §5.612.

(3) The types of properties described in subparagraphs (A) - (D) of this paragraph are required to recertify annually the income of each low-income household using a Department approved Income Certification form and documentation to support the Income Certification (see subsection (a)(1) - (2) of this section):

(A) Mixed income Housing Tax Credit, TCAP and Exchange projects (as defined by line 8(b) of IRS Form(s) 8609 and accompanying statements, if any) that have not completed the fifteen (15) year Compliance Period;

(B) All Bond developments with less than 100 percent of the units set aside for households with an income less than 50 percent or 60 percent of area median income.

(C) HTF Developments with Market Rate units. However, HTF Developments with other Department administered programs will comply with the requirements of the other program. Example 612(2) [~~(1)~~]: If a Development is mixed income HTF and 100 percent low-income HTC, all households must be certified at move in. Then, once a calendar year, the Owner must collect the data required by and in accordance with the paragraphs (1) and (2) of this subsection.

(D) HOME Developments. Refer to subsection (c) of this section.

(c) Ongoing tenant file requirements for HOME Developments:

(1) HOME Developments must complete a recertification with verifications of each HOME assisted Unit every sixth year of the Development's affordability period. The recertification is due on the anniversary of the household's move-in date. For purposes of this section the beginning of a HOME Development affordability period is the effective date on the first page of the HOME LURA. For example, a HOME Development with a LURA effective date of May 2001 will have the years of the affordability determined in Example 612(3) [~~(2)~~]:

(A) Year 1: May 15, 2001 - May 14, 2002;

(B) Year 2: May 15, 2002 - May 14, 2003;

(C) Year 3: May 15, 2003 - May 14, 2004;

(D) Year 4: May 15, 2004 - May 14, 2005;

(E) Year 5: May 15, 2005 - May 14, 2006;

(F) Year 6: May 15, 2006 - May 14, 2007;

(G) Year 7: May 15, 2007 - May 14, 2008;

(H) Year 8: May 15, 2008 - May 14, 2009;

(I) Year 9: May 15, 2009 - May 14, 2010;

(J) Year 10: May 15, 2010 - May 14, 2011;

(K) Year 11: May 15, 2011 - May 14, 2012; and

(L) Year 12: May 15, 2012 - May 14, 2013.

(2) In the scenario described in paragraph (1) of this subsection, all households in HOME Units must be recertified with source documentation during the sixth and twelfth years or between May 15, 2006, to May 14, 2007, and between May 15, 2012, and May 14, 2013.

(3) In the intervening years the Development must collect a self certification by the effective date of the original Income Certification from each household that is assisted with HOME funds, Example 612(4) [~~(3)~~]: a household moved into a HOME unit on June 10, 2010, the household's self certification must be completed by June 10, 2011, and the household must be recertified with source documentation effective June 10, 2012. The Development must use the Department's HOME Program Recertification [~~Income Certification~~] form, unless the property also participates in the Rural Development or a project Based HUD program, in which case, the other program's Income Certification form will be accepted. If the household reports on their self certification that their annual income exceeds the current 80 percent applicable income limit or there is evidence that the household's written statement failed to completely and accurately provide information about the household's characteristics and/or income, then an annual income recertification with verifications is required.

§10.613. Lease Requirements.

(a) Eviction and/or termination of a lease. For HTC Developments, IRS Revenue Ruling 2004-82 prohibits the eviction or termination of tenancy of low-income households for other than good cause throughout the entire Affordability Period, and for three (3) years after termination of an extended low-income housing commitment. Owners executing or renewing leases after November 1, 2007, shall specifically state in the lease or in an addendum attached to the lease that evictions or terminations of tenancy for other than good cause are prohibited.

(b) For HOME and NSP Developments, the HOME Final Rule (and as adopted by Texas NSP) prohibits Owners from evicting low-income residents or refusing to renew a lease except for serious or repeated violations of the terms and conditions of the lease, for violations of applicable federal, state or local law, for completion of the tenancy period for transitional housing, or for other good cause. To terminate tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action at least thirty (30) days before the termination of tenancy. Owners executing or renewing leases after November 1, 2007, shall specifically state in the lease or in an addendum attached to the lease that evictions or non-renewal of leases for other than good cause are prohibited (24 CFR §92.253). Owners must also comply with all other lease requirements and prohibitions stated in 24 CFR §92.253.

(c) Evictions and terminations of tenancy for other than good cause are prohibited. If a challenge to an eviction or termination of tenancy is related to a reasonable accommodation as defined by §1.204 of this title (relating to Reasonable Accommodations), a violation of the provision found in subsection (g) of this section, or for Developments financed by Direct Loans Title 104(d) of the Housing and Community Development Act of 1974 or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the Department upon the request of either party will provide an opinion if an Owner has good cause. Otherwise, the Department does not determine if an Owner has good cause or if a resident has violated the lease terms for other reasons.

Challenges for evictions or terminations of tenancy for other reasons must be made by a court of competent jurisdiction or an agreement of the parties in arbitration, and the Department will rely on that determination.

[(c) The Department does not determine if an Owner has good cause or if a resident has violated the lease terms. If there is a challenge to a good cause eviction, that determination will be made by a court of competent jurisdiction or an agreement of the parties in arbitration. The Department will rely on the court decision or the agreement of the parties.]

(d) HTC and Bond Developments must use a lease or lease addendum that requires households to report changes in student status.

(e) Owners of HTC Developments are prohibited from locking out or threatening to lock out any Development resident, except by judicial process, unless the exclusion is necessary for the purpose of performing repairs or construction work, or in cases of emergency. Owners are further prohibited from seizing or threatening to seize the personal property of a resident except by judicial process unless the resident has abandoned the premises. These prohibitions must be included in the lease or lease addendum.

(f) For HOME and NSP Developments, properties that were initially built for occupancy prior to 1978 must include in their lease or lease addendum a Lead Warning Statement. To demonstrate compliance, the Department will monitor that, all households at HOME and NSP Developments have signed the Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards. (24 CFR §92.355 and §570.487(c))

(g) All Owners shall comply with the lease requirements found in Section 601 of the Violence Against Women Reauthorization Act of 2013 ("VAWA 2013"). In general, owners may not construe an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking as a serious or repeated violation of a lease term by the victim or threatened victim or as good cause for terminating tenancy. However, in accordance with VAWA 2013, owners may bifurcate a lease to terminate the tenancy of an individual who is a tenant or lawful occupant and engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against another lawful occupant living in the unit or other affiliated individual as defined in the VAWA 2013.

(h) Leasing of HOME units by organizations that, in turn, rent those units to individuals is not permissible for HOME developments committed funding after August 23, 2013.

(i) Housing Tax Credit units leased to an organization through a supportive housing program where the owner receives a rental payment for the unit regardless of physical occupancy will be found out of compliance if the unit remains vacant for over 60 [30] days. The unit will be found out of compliance under the finding "Violation of the Unit Vacancy Rule."

(j) It is a Development Owner's responsibility at all times to know what it has agreed to provide by way of common amenities, unit amenities, and services.

(k) A Development Owner shall provide each household, during the application process and upon a subsequent change to the items described in paragraph (2) of this subsection, the brochure made available by the Department, *A Tenant Rights and Resources Guide for TDHCA Monitored Rental Properties,* which includes:

(1) Information about Fair Housing and tenant choice;

(2) Information regarding common amenities, unit amenities, and services; and,

(3) A certification that a representative of the household must sign prior to, but no more than 120 days prior to, the initial lease execution acknowledging receipt of this brochure.

(4) In the event this brochure is not provided timely or the household does not certify to receipt of the brochure, correction will be achieved by providing the household with the brochure and receiving a signed certification that it was received.

[(k) A Development Owner shall provide each household, at the time of execution of an initial lease and whenever there is a subsequent change in common amenities, unit amenities, or required services, a notice describing those amenities and services.]

[(l) The notice required under subsection (k) of this section must also contain the following:]

[(1) "The Texas Department of Housing and Community Affairs (the "Department") is responsible for monitoring this Development for compliance with any land use restriction agreement setting forth required common amenities, unit amenities, or services in connection with programs administered by the Department."; and]

[(2) The Department contact information including the mailing address, website and toll free phone number.]

§10.614. Utility Allowances.

(a) The Department will monitor to determine if Developments comply with published rent limits which include an allowance for tenant paid utilities. For HTC, TCAP, and Exchange buildings, if the residents pay utilities directly to the Owner of the building or to a third party billing company and the amount of the bill is based on an allocation method or "Ratio Utility Billing System" (RUBS), this monthly amount will be considered a mandatory fee. For HTC, TCAP, and Exchange buildings, if the residents pay utilities directly to the Owner of the building or to a third party billing company, and the amount of the bill is based on the tenant's actual consumption, Owners may account for the utility in an allowance. The rent, plus all mandatory fees, plus an allowance for those utilities paid by the resident directly to a utility provider, must be less than or equal to the allowable limit. For HOME, Bond, HTF, and NSP buildings, Owners may account for utilities paid directly to the Owner or to a third party billing company in their utility allowance. Where residents are responsible for some or all of the utilities--other than telephone, cable, and internet--Development Owners must use a utility allowance that complies with both this section and the applicable program regulations.

(b) An Owner may not change utility allowance methods, [or] start or stop charging residents for a utility without prior written approval from the Department. Example 614(1): A Housing Tax Credit Development has been paying for water and sewer since the beginning of the Compliance Period. In year 8, the Owner decides to require residents to pay for water and sewer. Prior written approval from the Department is required. Any such request must include the Utility Allowance Questionnaire found on the Department's website and supporting documentation. The Department will respond by approving or denying within ninety (90) days of the date on which the party making the request has completed the questionnaire and provided all required supporting documentation and responded to any Department requests for clarification or additional information.

(c) Rural Housing Services (RHS) buildings or buildings with RHS assisted tenants. The applicable utility allowance for the Development will be determined under the method prescribed by the RHS (or successor agency). No other utility method described in this section can be used by RHS buildings or buildings with RHS assisted tenants.

(d) HUD-Regulated buildings layered with any Department program. If neither the building nor any tenant in the building re-

ceives RHS rental assistance payments, and the rents and the utility allowances of the building are reviewed by HUD (HUD-regulated building), the applicable utility allowance for all rent restricted Units in the building is the applicable HUD utility allowance. No other utility method described in this section can be used by HUD-regulated buildings.

(e) HOME units at HOME developments committed funds after August 23, 2013 must use the HUD Utility Schedule Model. The utility allowance will be calculated by the Department on an annual basis and provided to the Owner with a deadline for implementation.

(f) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the methods described in paragraphs (1) - (5) of this subsection:

(1) The utility allowance established by the applicable Public Housing Authority (PHA) for the Section 8 Existing Housing Program. The Department will utilize Texas Local Government Code, Chapter 392 to determine which PHA is the most applicable to the Development.

(A) If the PHA publishes different schedules based on building type, the Owner is responsible for implementing the correct schedule based on the Development's building type(s). Example 614(2): The applicable PHA publishes a separate utility allowance schedule for Apartments (5+ units), one for Duplex/Townhomes and another for Single Family Homes. The Development consist of twenty buildings, ten of which are Apartments (5+ units) and the other ten buildings are Duplexes. The Owner must use the correct schedule for each building type.

(B) In the event the PHA publishes a utility allowance schedule specifically for energy efficient units, and the Owner desires to use such a schedule, the Owner must demonstrate that the building(s) meet the housing authority's specifications for energy efficiency once every five (5) years.

(C) If the applicable PHA allowance lists flat fees for any utility, those flat fees must be included in the calculation of the utility allowance if the resident is responsible for that utility.

(D) If the individual components of a utility allowance are not in whole number format, the correct way to calculate the total allowance is to add each amount and then round the total to the next whole dollar. Example 614(3): Electric cooking is $8.63, Electric Heating is $5.27, Other Electric is $24.39, Water and Sewer is $15. The utility allowance in this example is $54.00.

(E) [~~(D)~~] If an Owner chooses to implement a methodology as described in paragraph (2), (3), (4), or (5) of this subsection, for Units occupied by Section 8 voucher holders, the utility allowance remains the applicable PHA utility allowance established by the PHA from which the household's voucher is received.

(F) [~~(E)~~] In general, if the property is located in an area that does not have a municipal, county, or regional housing authority that publishes a utility allowance schedule for the Section 8 Existing Housing Program, Owners must select an alternative methodology. In the event the property is located in an area without a clear municipal or county housing authority the Department may permit the use of another housing authority's utility allowance schedule on a case by case basis, unless other conflicting guidance is received from the IRS or HUD. It is the sole responsibility of the Owner to provide the Department with specific rationale to support the request. Prior approval from the Department is required and the owner must obtain approval on an annual basis.

(2) A written estimate from a local utility provider. If there are multiple utility companies that service the Development, the local provider must be a residential utility company that offers service to the residents of the Development requesting the methodology. The Department will use the Texas Electric Choice website: http://www.powertochoose.org/ to verify the availability of service. If the utility company is not listed as a provider in the Development's ZIP code, the request will be denied. Additionally, the estimate must be signed by the utility provider representative and specifically include all "component charges" for providing the utility service. Receipt of the information from the utility provider begins the ninety (90) day period after which the new utility allowance must be used to compute gross rent;

(3) The HUD Utility Schedule Model. A utility estimate can be calculated by using the "HUD Utility Schedule Model" that can be found at http://www.huduser.org/portal/resources/utilmodel.html (or successor Uniform Resource Locator). Each item on the schedule must be displayed out to two decimal places. The total allowance must be rounded up to the next whole dollar amount. The rates used must be no older than the rates in effect sixty (60) days prior to the beginning of the ninety (90) day period in which the Owner intends to implement the allowance. For Owners calculating a utility allowance under this methodology, the model, along with all back-up documentation used in the model, must be submitted to the Department[~~, on a Compact Disc or flash drive,~~] within the timeline described in subsection (h) of this section. The date entered as the "Form Date" on the "Location" tab of the spreadsheet will be the date used to begin the ninety (90) day period after which the new utility allowance must be used to compute gross rent;

(4) An Energy Consumption Model. The utility consumption estimate must be calculated by a properly licensed mechanical engineer or an individual holding a valid Residential Energy Service Network (RESNET) or Certified Energy Manager (CEM) certification. The individual must not be related to the Owner within the meaning of §267(b) or §707(b) of the Code. The utility consumption estimate must, at minimum, take into consideration specific factors that include, but are not limited to, Unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of building location. Use of the Energy Consumption Model is limited to the building's consumption data for the twelve (12) month period ending no earlier than sixty (60) days prior to the beginning of the ninety (90) day period and utility rates used must be no older than the rates in place sixty (60) days prior to the beginning of the ninety (90) day period. In the case of a newly constructed or renovated building with less than twelve (12) months of consumption data, the qualified professional may use consumption data for the twelve (12) month period from units of similar size and construction in the geographic area in which the building containing the units is located. The ninety (90) day period after which the new utility allowance must be used to compute gross rent will begin sixty (60) days after the end on the last month of the twelve (12) month period for which data was used to compute the estimate; and

(5) An allowance based upon an average of the actual use of similarly constructed and sized Units in the building using actual utility usage data and rates, provided that the Development Owner has the written permission of the Department. This methodology is referred to as the "Actual Use Method."

(g) For a Development Owner to use the Actual Use Method they must:

(1) Provide a minimum sample size of usage data for at least 5 Continuously Occupied Units of each Unit Type or 20 percent of each Unit Type whichever is greater. Example 614(4)[~~(3)~~]: A Development has 20 three bedroom/one bath Units, and 80 three bedroom/two bath Units. Each bedroom/bathroom equivalent Unit is

within 120 square feet of the same floor area. Data must be supplied for at least five of the three bedroom/one bath Units, and sixteen of the three bedroom/two bath Units. If there are less than five Units of any Unit Type, data for 100 percent of the Unit Type must be provided;

(2) Scan the information in subparagraphs (A) - (E) of this paragraph [~~onto a CD~~] and submit it to the Department no later than the beginning of the ninety (90) day period after which the Owner intends to implement the allowance, reflecting data no older than sixty (60) days prior to the ninety (90) day implementation period. Example 614(5)[~~(4)~~]: The utility provider releases the information regarding electric usage at Westover Townhomes on February 5, 2010. The data provided is from February 1, 2009, through January 31, 2010. The Owner must submit the information to the Department no later than March 31, 2010, for the information to be valid;

(A) An Excel spreadsheet listing each Unit for which data was obtained to meet the minimum sample size requirement of a Unit Type, the number of bedrooms, bathrooms and square footage for each Unit, the household's move-in date, the actual kilowatt usage for each month of the twelve (12) month period for each Unit for which data was obtained, and the rates in place at the time of the submission;

(B) A copy of the request to the utility provider (or billing entity for the utility provider) to provide usage data;

(C) All documentation obtained from the utility provider (or billing entity for the utility provider) and/or copies of actual utility bills gathered from the residents, including all usage data not needed to meet the minimum sample size requirement and any written correspondence from the utility provider;

(D) The rent roll showing occupancy as of the end of the month for the month in which the data was requested from the utility provider; and

(E) Documentation of the current utility allowance used by the Development.

(3) Upon receipt of the required information, the Department will determine if the Development Owner has provided the minimum information necessary to calculate an allowance using the Actual Use Method. If so, the Department shall calculate the utility allowance for each bedroom size using the guidelines described in subparagraphs (A) - (E) of this paragraph;

(A) If data is obtained for more than 20 percent of all units or there are more than 5 of a Unit Type, all data will be used to calculate the allowance;

(B) If more than twelve (12) months of data is provided for any Unit, only the data for the most current twelve (12) months will be averaged;

(C) The allowance will be calculated by multiplying the average units of measure for the applicable utility (i.e., kilowatts over the last twelve (12) months by the current rate) for all Unit Types within that bedroom size. For example, if sufficient data is supplied for 18 two bedroom/one bath Units, and 12 two bedroom/two bath Units, the data for all 30 Units will be averaged to calculate the allowance for all two bedroom Units;

(D) The allowance will be rounded up to the next whole dollar amount. If allowances are calculated for different utilities, each utility's allowance will be rounded up to the next whole dollar amount and then added together for the total allowance; and

(E) If the data submitted indicates zero usage for any month, the data for that Unit will not be used to calculate the Utility Allowance.

(4) The Department will complete its evaluation and calculation within forty-five (45) days of receipt of all the information requested in paragraph (2) of this subsection;

(5) Receipt of approval from the Department will begin the ninety (90) day period after which the new utility allowance must be used to compute gross rent; and

(6) For newly constructed Developments or Developments that have Units which have not been continuously occupied, the Department, on a case by case basis, may use consumption data for Units of similar size and construction in the geographic area to calculate the utility allowance.

(h) Effective dates. If the Owner uses the methodologies as described in subsection (c), (d), or (f)(1) of this section, any changes to the allowance can be implemented immediately, but must be implemented for rent due at least ninety (90) days after the change. For methodologies as described in subsection (f)(2) - (5) of this section, the allowance cannot be implemented until the estimate is submitted to the Department and is made available to the residents by posting in a common area of the leasing office at the Development. This action must be taken by the beginning of the ninety (90) day period in which the Owner intends to implement the utility allowance. If the Owner fails to post the notice to the residents and submit the request to the Department by the beginning of the 90 day period, the Department's approval or denial will be delayed for up to 90 days after Department notification. Example 614(6): The Owner has chosen to calculate the electric portion of the utility allowance using the written local estimate. The annual letter is dated July 5, 2014, and the notice to the residents was posted in the leasing office on July 5, 2014. However, the Owner failed to submit the request to the Department for review until September 15, 2014. Although the Notice to the Residents was dated the date of the letter from the utility provider, the Department was not provided the full 90 days for review. As a result, the allowance cannot be implemented by the owner until approved by the Department.

(i) Requirements for Annual Review.

(1) RHS and HUD-Regulated Buildings. Owners must demonstrate that the utility allowance has been reviewed annually and in accordance with the RHS or HUD regulations.

(2) Buildings using the PHA Allowance. Owners are responsible for periodically determining if the applicable PHA released an updated schedule to ensure timely implementation. When the allowance changes or a new allowance is made available by the PHA, it can be implemented immediately, but must be implemented for rent due ninety (90) days after the change.

(3) HOME Developments committed funds after August 23, 2013. On an annual basis, the Department will calculate the utility allowance using the HUD Utility Schedule Model or other methods allowed in accordance with HUD guidance.

(4) Written Local Estimate, HUD Utility Model Schedule and Energy Consumption Model. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than October 1st of each year However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review. At the same time the update is submitted to the Department, the Owner must post the utility allowance estimate in a common area of the leasing office at the Development. The Department will review the request for compliance with all applicable requirements and reasonableness. If, in comparison to other approved utility allowances for properties of similar size, construction and population in the same geographic area, the allowance does not appear reasonable or appears understated, the

Department may require additional support and/or deny the request. If approved, changes to the allowance can be implemented ninety (90) days after the request was submitted to the Department and provided to the residents.

(5) Actual Use Method. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than August 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review.

(j) Combining Methodologies. With the exception of HUD regulated buildings, HOME units at HOME Developments committed funds after August 23, 2013 and RHS buildings, Owners may combine any methodology described in this section for each utility service type paid directly by the resident and not by or through the Owner of the building (electric, gas, etc.). For example, if residents are responsible for electricity and gas, an Owner may use the appropriate PHA allowance to determine the gas portion of the allowance and use the Actual Use Method to determine the electric portion of the allowance.

(k) Increases in Utility Allowances for Developments with HOME or NSP funds. Unless otherwise instructed by HUD, the Department will permit owners to implement changes in utility allowance in the same manner as Housing Tax Credit (HTC) Developments.

(l) The Owner shall maintain and make available for inspection by the tenant, the data, underlying assumptions and methodology that was used to calculate the allowance. Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling Unit of the tenant at the convenience of both the Owner and tenant.

(m) If Owners want to utilize the HUD Utility Schedule Model, the Written Local Estimate or the Energy Consumption Model to establish the initial utility allowance for the Development, no more than one hundred eighty (180) days and no less than ninety (90) days prior to the commencement of leasing activities, the Owner must submit utility allowance documentation for Department approval. This subsection does not preclude an Owner from changing to one of these methods after commencement of leasing in accordance with subsection (b) of this section.

(n) The Department reserves the right to outsource to a third party the review and approval of all or any utility allowance requests to use the Energy Consumption Model or when review requires the use of expertise outside the resources of the Department. In accordance with Treasury Regulation §1.42-10(c) any costs associated with the review and approval shall be paid by the Owner.

(o) All requests described in this subsection must be uploaded directly to the Development's CMTS account using the "Utility Allowance Documents" in the type field.

§10.618. Onsite Monitoring.

(a) The Department may perform an onsite monitoring review of any low-income Development, and review and photocopy all documents and records supporting compliance with Departmental programs through the end of the Compliance Period or the end of the period covered by the LURA, whichever is later. The Development Owner shall permit the Department access to the Development premises and records.

(b) The Department will perform onsite monitoring reviews of each low-income Development. The Department will conduct:

(1) The first review of HTC, Exchange, and TCAP Developments by the end of the second calendar year following the year the last building in the Development is placed in service;

(2) The first review of all Developments, other than those described in subsection (b)(1) of this section, as leasing commences;

(3) During the Federal Compliance Period subsequent [~~Subsequent~~] reviews will be conducted at least once every three (3) years [~~during the Affordability Period~~];

(4) After the Federal Compliance Period, developments will be monitored in accordance with §10.623 of this chapter (relating to Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period);

(5) [~~(4)~~] A physical inspection of the Development including the exterior of the Development, Development amenities, and an interior inspection of a sample of Units;

(6) [~~(5)~~] Limited reviews of physical conditions, including follow-up inspections to verify completion of reported corrective action, may be conducted without prior notice (unless access to tenant units is required, in which case at least forty-eight (48) hours notice will be provided); and

(7) [~~(6)~~] Reviews, meetings, and other appropriate activity in response to complaints or investigations.

(c) The Department will perform onsite file reviews and monitor:

(1) Low-income resident files in each Development, and review the Income Certifications;

(2) The documentation the Development Owner has received to support the certifications;

(3) The rent records; and

(4) Any additional aspects of the Development or its operation that the Department deems necessary or appropriate.

(d) At times other than onsite reviews, the Department may request for review, in a format designated by the Department, information on tenant income and rent for each Low-Income Unit and may require a Development Owner to submit copies of the tenant files, including copies of the Income Certification, the documentation the Development Owner has received to support that certification, and the rent record for any low-income tenant.

(e) The Department will select the Low-Income Units and tenant records that are to be inspected and reviewed. Original records are required for review. The Department will not give Development Owners advance notice that a particular Unit, tenant record, or a particular year will be inspected or reviewed. However, the Department will give reasonable notice to the Development Owner that an onsite inspection or a tenant record review will occur so the Development Owner may notify tenants of the inspection or assemble original tenant records for review. If a credible complaint of fraud or other egregious alleged or suspected noncompliance is received, the Department reserves the right to conduct unannounced onsite monitoring visits.

§10.620. Monitoring for Non-Profit Participation or HUB Participation.

(a) (No change.)

(b) If an Owner wishes to change the participating non-profit or HUB, prior written approval from the Department is necessary. [~~The Annual Owner's Compliance Report also requires Owners to certify to compliance with this requirement.~~] In addition, the IRS will be notified

if the non-profit is not materially participating on a HTC Development during the Compliance Period.

(c) (No change.)

§10.624. Events of Noncompliance.

Figure: 10 TAC §10.624 lists events for which a multifamily rental development may be found to be in noncompliance for compliance monitoring purposes. This list is not an exclusive list of events and issues for which an Owner may be subject to an administrative penalty, debarment or other enforcement action. The first column of the chart identifies the noncompliance event. The second column indicates to which program(s) the noncompliance event applies. The last column indicates if the issue is reportable on IRS Form 8823 for HTC Developments.

Figure: 10 TAC §10.624

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, 2014.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 19, 2014
For further information, please call: (512) 475-3959

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10 TAC §10.610, §10.617

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 10, Subchapter F, §10.610, concerning Tenant Selection Criteria, and §10.617, concerning Affirmative Marketing Requirements. This repeal is being proposed concurrently with the proposal of new §10.610, concerning Tenant Selection Criteria, and §10.617, concerning Affirmative Marketing Requirements, which will improve compliance with federal Fair Housing requirements.

FISCAL NOTE. Timothy K. Irvine, Executive Director, 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.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, there will be no change in the public benefit anticipated as a result of the repeal. There will be no economic impact to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014, through October 20, 2014 to receive input on the proposed amendment. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Laura DeBellas, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 936-7366. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeal affects no other code, article, or statute.

§10.610. Tenant Selection Criteria.

§10.617. Affirmative Marketing 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 8, 2014.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 19, 2014
For further information, please call: (512) 475-3959

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10 TAC §10.610, §10.617

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Subchapter F, §10.610, concerning Tenant Selection Criteria, and §10.617, concerning Affirmative Marketing Requirements. The purpose of these new sections is to clarify and improve compliance requirements with federal Fair Housing laws. The repeal of existing §10.610 and §10.617 is proposed concurrently with this proposal.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be improved compliance with affordable housing program administered by the Department. Many of the requirements reflected in the proposed rules are already required of owners under federal law and are not anticipated to increase costs to owners or the state. While owners would be required to prepare updates to affirmative marketing plans more frequently than under the existing rules, the provision of additional tools for use in the preparation of such plans and objective criteria for the preparation of such plans are expected to offset any additional costs. The data used for the creation of these tools is already being used by the Department to comply with existing Federal requirements and is not expected to increase costs to the Department. The proposed tenant selection rules contain several updates that are already requirements under federal law and are therefore not expected to produce additional costs to owners as compared to the existing rules. Other updates codify standards that are existing practice for the majority of owners and, except

in limited instances, the proposed rules are not expected to result in additional costs to owners.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. Many of the requirements reflected in the proposed rules are already required of owners under federal law and are not anticipated to increase costs to owners or the state. While owners would be required to prepare updates to affirmative marketing plans more frequently than under the existing rules, the provision of additional tools for use in the preparation of such plans and objective criteria for the preparation of such plans are expected to offset any additional costs. The data used for the creation of these tools is already being used by the Department to comply with existing Federal requirements and is not expected to increase costs to the Department. The proposed tenant selection rules contain several updates that are already requirements under federal law and are therefore not expected to produce additional costs to owners as compared to the existing rules. Other updates codify standards that are existing practice for the majority of owners and, except in limited instances, the proposed rules are not expected to result in additional costs to owners.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014, through October 20, 2014 to receive input on the proposed amendment. Written comments may be submitted by mail to the Texas Department of Housing and Community Affairs, Laura DeBellas, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 936-7366. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed new sections affect no other code, article, or statute.

§10.610. Tenant Selection Criteria.

(a) Owners must maintain written tenant selection criteria that includes, at a minimum, the following information:

(1) Tenant eligibility requirements that determine an applicant's basic eligibility for the property, including any lawful resident preferences, restrictions, and requirements;

(2) Procedures the Development uses in taking applications and opening, closing, and selecting applicants from the waitlist, including but not limited to how preferences are applied and procedures for prioritizing applicants needing accessible units in accordance with 24 CFR 8.27 and considering applicants covered by the Violence Against Women Reauthorization Act of 2013;

(3) Applicant screening criteria including what is screened, by whom, and what scores or findings would result in ineligibility;

(4) The manner by which rejections of applications will be handled, including timeframes and appeal procedures, if any;

(5) Occupancy standards; and

(6) Unit transfer policies.

(b) The criteria cannot:

(1) Include residency preferences unless preferences are due to exceptional circumstances approved by TDHCA prior to initial lease up or at application or the property receives Federal assistance and has received written approval from HUD or USDA for such preference;

(2) Exclude an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), Section 811 PRA Program, or other federal, state, or local government rental assistance program;

(3) Use a financial or minimum income standard for a household participating in a voucher program that requires the household to have a monthly income of more than 2.5 times the household's share of the total monthly rent amount. However, if a family's share of the rent is $50 or less, Owners may require a minimum annual income of $2,500;

(4) Exclude a household with person(s) with disabilities from admission to the Development because an accessible unit is not currently available or require a household to rent a unit that has already been made accessible;

(5) Require a household to provide specific medical or disability information other than the disability verification that may be requested to verify eligibility for reasonable accommodation or special needs set aside programs;

(6) In accordance with the Violence Against Women Reauthorization Act of 2013, deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking;

(7) Prioritize households not residing in the Development over those already residing at the Development in instances in which an existing tenant household is seeking a unit with a lower income restriction than the unit in which they currently reside. (Example: A household residing in a 60% AMI unit is income qualified for a 50% AMI unit and wishes to be placed on the waiting list for a 50% AMI unit. The household should be entered on the waitlist using the same process as households not currently residing in the Development.); and

(8) Require fewer than 2 persons per bedroom for each rental unit unless otherwise directed by local building code or safety regulations; and

(9) Be applied retroactively except under circumstances in which prior criteria violate federal or state law; tenants who already reside in the development at the time new or revised leasing criteria are applied and who are otherwise in good standing under the lease must not receive notices of non-renewal based solely on their failure to meet the new or revised criteria.

(c) The criteria must:

(1) Avoid the use of vague terms such as "elderly," "bad credit," "negative rental history," "poor housekeeping," or "criminal history" unless terms are clearly defined within the criteria made available to applicants;

(2) Provide that the Development will comply with state and federal fair housing and antidiscrimination laws, including but not limited to consideration of reasonable accommodations requested to complete the application process as identified in Chapter 1, Subchapter B of this title;

(3) Provide that reasonable accommodations in the form of waivers of tenant eligibility may be considered where convictions or prior tenancy references can be attributed to a disability or to domestic violence perpetrated against the applicant; if additional mitigating factors will be considered, include how such decisions will be made and what must be provided for consideration;

(4) Provide that screening criteria will be applied uniformly and in a manner consistent with all applicable law, including the Texas and Federal Fair Housing Acts, the Federal Fair Credit Reporting Act, program guidelines, and the Department's rules;

(5) Be reasonably related to program eligibility and the applicant's ability to perform obligations under the lease;

(6) For all elderly Developments, list specific age requirements and demonstrate a commitment to operate the Development as Housing for Older Persons as directed under the Housing for Older Persons Act of 1995 as amended;

(7) Provide that specific animal, breed, number, weight restrictions, pet rules, and pet deposits will not apply to households having a qualified service/assistance animal(s); and

(8) Provide an effective date for the tenant selection criteria. Any amendments to the criteria require a new effective date.

(d) Owners of all multifamily developments must also:

(1) Maintain a written waiting list.

(A) The waitlist must be managed as described in the Tenant Selection Criteria;

(B) The waitlist must include a log of all applicants that completed the application process, including any household and demographic information that is typically collected, voucher status, and information pertaining to the specific reasons for which any applicant was denied. The log must be made available to the Department upon request;

(C) Have written waitlist policies and tenant selection criteria available in the leasing office or wherever applications are taken.

(2) Provide any rejected or ineligible applicant/household that completed the application process with a written notification of the grounds for rejection that includes the specific reason for the denial and references the specific leasing criteria upon which the denial is based within seven (7) days of the determination. Rejection letters must include contact information for any third parties that provided the information on which the rejection was based and information on the appeals process if one is used by the property;

(3) Provide in any non-renewal or termination notice as allowed under applicable program rules a specific reason for the termination or non-renewal. The notification must be delivered as required under applicable program rules, must provide that the owner may only enforce the termination of tenancy by judicial action and that the tenant has the right to present a defense in court if the tenant contests the termination or non-renewal, and that any person with a disability has the right to request a reasonable accommodation to better understand or contest the threat of termination or non-renewal. The notification must also include information on the appeals process if one is used by the property.

§10.617. Affirmative Marketing Requirements.

(a) Applicability. Compliance with this section is required for all Developments with five (5) or more total units to further the objectives of Title VIII of the Civil Rights Act of 1968 and Executive Order 13166.

(b) General. Owners of Developments with five (5) or more total units must affirmatively market their units to promote equal housing choice for prospective tenants, regardless of race, color, religion, sex, national origin, familial status, or disability and must develop and carry out an Affirmative Fair Housing Marketing Plan (or "Affirmative Marketing Plan") to provide for marketing strategies and documentation of outreach efforts to prospective applicants identified as "least likely to apply." In general, those populations that are least likely to apply may include: African Americans, Native Americans, Alaskan Natives, Asians, Native Hawaiians, Other Pacific Islanders, Caucasians (non-Hispanic), Hispanics or Latinos, and families with children. All Affirmative Marketing Plans must provide for affirmative marketing to persons with disabilities. Some Developments may be required by their LURAs to market units specifically to veterans or other populations.

(c) Plan format. Owners are encouraged to use HUD Form 935.2A, or its updated equivalent, and corresponding worksheets to meet Affirmative Marketing requirements. The Department may make additional forms or tools available for use.

(d) Determination of populations "least likely to apply." Owners must determine the populations "least likely to apply" (also "identified populations") using the methods identified in paragraphs (1) - (4) of this subsection. Owners may use the methods in paragraphs (1) and (2) of this subsection if the Development is not occupied, if the Development is in initial lease-up, if the Development is less than 40 total units, or the Owner determines that the demographic data on the tenant households and waiting list for the Development ("Tenant Pool") is not sufficiently complete to yield an accurate profile of the populations the Development is serving. Except in the cases of populations that must be the subject of affirmative marketing pursuant to LURA requirements and persons with disabilities, any populations that represent less than 1% of the total population of the county or MSA, as applicable, are not required to be considered "least likely to apply." To assist Owners in identifying least likely to apply populations, the Department shall make the tool described in paragraph (5) of this subsection available to Owners.

(1) New Developments located in Metropolitan Statistical Areas ("MSAs"). The Owner must compare the demographic data from the most recent decennial census for the census tract in which the development site is located to the demographic data of the entire MSA in which the development site is located. The comparison must be done for each of the populations identified in subsection (b) of this section using the percentage each group represents for the census tract and MSA. The Owner will identify any population in which the percentage representation in the census tract is more than 20% less than the same population's percentage representation in the MSA (i.e. a population is more than 20% underrepresented in the census tract as compared to the MSA as a whole).

(2) New Developments not located in MSAs. The Owner must compare the demographic data from the most recent decennial census for the census tract in which the development site is located to the demographic data of the county in which the development site is located. The comparison must be done for each of the populations identified in subsection (b) of this section using the percentage each group represents for the census tract and county. The Owner will identify any population in which the percentage representation in the census tract is more than 20% less than the same population's percentage representation in the county (i.e., a population is more than 20% underrepresented in the census tract as compared to the county as a whole). Example 617(1), County data shows 80% of the population in the County is Non-White Hispanic; the new development's census tract shows that 40% of the new development's census tract is Non-White Hispanic. The development must market to the Non-White Hispanic population because the 40% of Non-White Hispanics represented in the census tract shows an underrepresentation of more than 20% (e.g., it is lower than 64%, which is 20% of 80%) when compared with the County percentage (80% x 20% = 16%; 80%-16% = 64%). If the census tract showed evidence of 65% or more Non-White Hispanics in the

area, the development would not market to the Non-White Hispanic population.

(3) Established Developments located in MSAs. The Owner must compare the demographic data of the Development's Tenant Pool to the demographic data of the MSA in which the development site is located. The comparison must be done for each of the populations identified in subsection (b) of this section using the percentage each group represents for the tenant pool and MSA. The Owner will identify any population in which the percentage representation in the Tenant Pool is more than 20% less than the same population's percentage representation in the MSA (i.e., a population is more than 20% underrepresented in the tenant pool as compared to the MSA as a whole). Example 617(2), the Owner's tenant pool shows that 5% of the population in the development is African American and that 8% of the population in the MSA is African American. The development must market to African American populations because the 5% of African Americans represented in the development shows an underrepresentation of more than 20% (8% x 20% = 1.6%; 8% - 1.6% = 6.4%). If the development showed evidence of 6.4% or more African Americans in the tenant pool, the development would not market to the African American population. In a development with 150 units in this scenario, at least 6.4% or 10 residents must be African American to show that the population is adequately represented and should not be selected as a "least likely to apply" group requiring special outreach and marketing.

(4) Established Developments not located in MSAs. The Owner must compare the demographic data of the Development's Tenant Pool to the demographic data of the county in which the development site is located. The comparison must be done for each of the populations identified in subsection (b) of this section using the percentage each group represents for the tenant pool and county. The Owner will identify any population in which the percentage representation in the tenant pool is more than 20% less than the same population's percentage representation in the county (i.e., a population is more than 20% underrepresented in the tenant pool as compared to the county as a whole).

(5) The Department will develop and maintain an online tool for performing the comparisons required by paragraphs (1) - (2) of this subsection, and an Owner may rely on analysis required under paragraphs (1) - (2) (but not an analysis made pursuant to subsection (e) of this section) made correctly using this tool. The Department may update the tool more frequently than an Owner is required to review and/or revise their Affirmative Marketing Plan pursuant to subsection (g) of this section. Provided an Owner is in compliance with subsection (g), an Owner is not required to update their plan as updates to the Department's tool are made available.

(e) Other determinations of "least likely to apply." If the owner identifies other ethnic and/or religious groups that may be underrepresented and chooses to incorporate such group(s) into the Affirmative Marketing Plan, the Owner must perform and document a reasonable process by which the groups were identified.

(f) Marketing and Outreach.

(1) The plan must include special methods of outreach to the "least likely to apply" populations, including identification of specific media and community contacts that actively engage with the identified populations, public gathering spaces in areas where such populations are well represented, and networking through community based organizations that work with members of the identified populations.

(2) Developments must utilize methods of outreach throughout the MSA (for Developments located in an MSA) or county (for Developments not located in an MSA). Efforts can be made beyond these areas at the discretion of the Owner. While these areas may be very large, in many instances outreach in areas located in another county or across town are necessary to effectively reach the identified populations.

(3) Developments must utilize methods of outreach that consider Limited English Proficiency in populations that are least likely to apply. Owners must translate advertisements and other marketing media for use with organizations identified in accordance with paragraph (2) of this subsection.

(4) Development Owners must both allow applicants to fill out applications at off-site locations and submit applications through means other than in-person submission at the Development site or leasing office (i.e. via mail, email, website form, fax, etc.). Applications must state available alternate means of submission and include address, email, or other necessary contact information on the form or its attached leasing criteria. If the development chooses to use an electronic application, prior approval from the Department is required to mitigate fraud, waste and abuse.

(5) Advertisements and/or marketing materials used must include the Fair Housing logo and give contact information that prospective tenants can access if reasonable accommodations are needed in order to complete the application process. The contact information must be in English and Spanish, at a minimum.

(g) Timeframes.

(1) An Owner must begin its affirmative marketing efforts for each of the identified populations at least six months prior to the anticipated date the first building is to be available for occupancy. As a condition of an award to a new Development, the Board may require affirmative marketing efforts to begin more than six (6) months prior to the anticipated date the first building is to be placed in service; and

(2) An Owner must update its Affirmative Marketing Plan and populations that are least likely to apply at least every two (2) years from the effective date of the current plan.

(h) Biennial Plan Review. The plan must include how, and by whom, data will be collected and evaluated, how often the plan will be re-evaluated, and how the re-evaluation will be completed. The Owner must review demographic data and household characteristics from the Tenant Pool relative to the county or MSA. If any identified population is or remains underrepresented by more than 20%, the Owner should determine whether the percentage of change is greater or less than when the Affirmative Marketing Plan was last evaluated. If, upon review of the Tenant Pool, the Owner determines that there has been no change (including negative change) or only a limited amount of success, the Owner must:

(1) Complete an evaluation of efforts to date (including a review of current advertising, outreach, and networking strategies and what, if any of the strategies used, has been successful) and gather a list of existing and new community resources available for use in revising the current Affirmative Fair Housing Marketing Plan; and

(2) Revise the Affirmative Fair Housing Marketing Plan to include a wider distribution area and/or new strategies for outreach and/or more frequent outreach efforts.

(i) Record keeping. Owners must maintain records of each Affirmative Marketing Plan and specific outreach efforts completed for the greater of three years or the recordkeeping requirement identified in the LURA.

(j) Exception to Affirmative Marketing. If the Development has closed its waiting list, Affirmative Marketing is not required. Affirmative Marketing is required as long as the Owner is accepting ap-

plications, has an open waiting list, or is marketing prior to placement in service as required under subsection (g)(1) 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 8, 2014.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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SUBCHAPTER G. FEE SCHEDULE, APPEALS AND OTHER PROVISIONS

10 TAC §§10.901 - 10.904

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter G §§10.901 - 10.904, concerning Fee Schedule, Appeals and Other Provisions. The purpose of the repeal is to allow for the adoption of new Subchapter G to provide for updated guidance relating to fees paid to the Department in order to cover the administrative costs of implementing the program and to provide guidance to applicants and awardees with regard to their responsibilities to the Department as well as a mechanism for formal communication with the Department.

FISCAL NOTE. Timothy K. Irvine, Executive Director, 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 new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also 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 repeal will be the replacement of existing Subchapter G with a new Subchapter G that encompasses requirements for all applications applying for multifamily funding through the Department. There is no change in economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014, to October 20, 2014, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan, and Texas Government Code, §2306.144, §2306.147, and §2306.6716.

The proposed repeal affects Texas Government Code Chapter 2306, including Subchapter DD, concerning Low Income Housing Tax Credit Program. The repeal affects no other statutes, articles or codes.

§10.901. Fee Schedule.

§10.902. Appeals Process.

§10.903. Adherence to Obligations.

§10.904. 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 8, 2014.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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10 TAC §§10.901 - 10.904

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Subchapter G, §§10.901 - 10.904, concerning the Uniform Multifamily Rules. The purpose of the proposed new sections is to provide for fees paid to the Department in order to cover the administrative costs of implementing the program and to provide guidance to applicants and awardees with regard to their responsibilities to the Department as well as a mechanism for formal communication with the Department. The proposed repeal of existing Subchapter G is published concurrently with this rulemaking.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also 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 adequate revenue to cover the cost of monitoring compliance with the program requirements. While the rule reflects a new fee related to the disclosure of undesirable neighborhood characteristics, should an applicant file an application for the same development the application fee assessed will be reduced by the disclosure fee already paid. The average cost of filing an application is between $15,000 and $30,000, 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.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that any new economic impact on small or micro-businesses is expected to be minimal, and/or offset by reductions in other fees and would only be incurred if the business engages in actions that are at its option. While the rule reflects a new fee related to the disclosure of undesirable neighborhood characteristics, should an applicant file an application for the same development the application fee assessed will be reduced by the disclosure fee already paid. The average cost of filing an application is between $15,000 and $30,000, 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.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014 to October 20, 2014, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-0764, attn: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan, and Texas Government Code, §2306.144, §2306.147, and §2306.6716.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning Low Income Housing Tax Credit Program. The new sections affect no other statutes, articles or codes.

§10.901. 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, Determination Notice or Contract, and ineligible to submit extension requests, ownership transfers, and Application amendments until such time the Department receives payment. Payments of the fees shall be in the form of a check and to the extent there are insufficient funds available, it may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. The Executive Director may grant a waiver for specific extenuating and extraordinary circumstances, provided the Applicant submits a written request for a waiver no later than ten (10) business days prior to the deadline associated with the particular fee. For those requests that do not have a specified deadline, the written request for a fee waiver and description of extenuating and extraordinary circumstances must be included in the original request cover letter.

(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 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, will receive a discount of 10 percent off the calculated pre-application 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. Intake and data entry will constitute 50 percent of the review, threshold review prior to a deficiency issued will constitute 30 percent of the review, and deficiencies submitted and reviewed constitute 20 percent of the review.

(3) Application Fee. Each Application must be accompanied by an Application fee.

(A) Housing Tax Credit Applications. The fee will be $30 per Unit based on the total number of Units. 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 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, will receive a discount of 10 percent off the calculated Application fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be $1,000 per Application. Pursuant to Texas Government Code, §2306.147(b), the Department is required to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. 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. An Application fee is not required for Applications that have an existing Housing Tax Credit Allocation or HOME Contract with the Department, and construction on the development has not begun or if requesting an increase in the existing HOME award. 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 amount of refund will be commensurate with the level of review completed. Intake and data entry will constitute 20 percent, the site visit will constitute 20 percent, eligibility and selection review will constitute 20 percent, threshold review will constitute 20 percent, and underwriting review will constitute 20 percent.

(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 in accordance with §10.201(5) of this chapter (relating to Procedural Requirements for Application Submission), 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) Administrative Deficiency Notice Late Fee. (Not applicable for Competitive Housing Tax Credit Applications). Applications that fail to resolve Administrative Deficiencies pursuant to §10.201(7) of this chapter shall incur a late fee in the amount of $500 for each business day the deficiency remains unresolved.

(7) Challenge Processing Fee. For Competitive Housing Tax Credits (HTC) Applications, a fee equal to $500 for challenges submitted per Application.

(8) Housing Tax Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and returns the credits by November 1 of the current Application Round, then a refund of 50 percent of the Commitment Fee may be issued upon request.

(9) Tax Exempt Bond Development Determination Notice Fee. No later than the expiration date in the Determination Notice, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and is not able close on the bonds within ninety (90) days of the issuance date of the Determination Notice, then a refund of 50 percent of the Determination Notice Fee may be issued upon request.

(10) Building Inspection Fee. (For Housing Tax Credit and Tax-Exempt Bond Developments only.) No later than the expiration date on the Commitment or Determination Notice, a fee of $750 must be submitted. Building inspection fees in excess of $750 may be charged to the Development Owner not to exceed an additional $250 per Development.

(11) 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 percent of the amount of the credit increase for one (1) year.

(12) Extension Fees. All extension requests for deadlines relating to the Carryover, 10 Percent Test (submission and expenditure), or Cost Certification requirements submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee. Any extension request submitted fewer than thirty (30) days in advance or after the original deadline must be accompanied by an extension fee of $2,500. 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.

(13) 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. Amendment fees are not required for the Direct Loan programs.

(14) 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.

(15) 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.

(16) 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.

(17) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of $500.

(18) 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 percent 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 one hundred eighty (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 Internal Revenue Code, §42. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director will 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 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 fourteen (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. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20 percent.

(19) Compliance Monitoring Fee. (HTC and HOME Developments Only.) Upon receipt of the cost certification for HTC or HTC and HOME Developments, or upon the completion of the 24-month development period and the beginning of the repayment period for HOME only Developments, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal $40 per tax credit Unit and $34 per HOME designated Unit, with two fees due for units that are dually designated. For HTC Developments, the fee will be collected, retroactively if applicable, beginning with the first year of the credit period. For HOME 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. 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.

(20) Public Information Request Fee. Public information requests are processed by the Department in accordance with the provisions of the Texas Government 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.

(21) Undesirable Neighborhood Characteristic Disclosure Fee. Applicants that disclose the presence of undesirable neighborhood characteristics pursuant to §10.101(a)(4) of this chapter (relating to Site and Development Requirements and Restrictions) must submit a $500 fee for Department review of such characteristics. Subsequent to paying the Undesirable Neighborhood Characteristics Disclosure Fee, if an Applicant submits an Application for the same Development Site,

the Application Fee assessed pursuant to paragraph (3) of this section shall be reduced by $500.

(22) 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 HOME programs will 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.

§10.902. Appeals Process (§2306.0321; §2306.6715).

(a) An Applicant or Development Owner may appeal decisions made by the Department pursuant to the process identified in this section. 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 or Pre-clearance for Applications), pre-application threshold criteria, 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 change to a Commitment or Determination Notice;

(6) Denial of a change to a loan agreement;

(7) Denial of a change to a LURA;

(8) Any Department decision that results in the erroneous termination 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 seven (7) calendar days 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 signed by the 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 fourteen (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 additional information can be provided in accordance with any rules related to public comment before the Board, the Department expects that a full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal be disclosed in the appeal documentation filed with the Executive Director. Full disclosure allows the Executive Director to make a fully informed decision based on a complete analysis of the circumstances, and verification of any information that may warrant a granting of the appeal in the Applicant's or Development Owner's favor.

(e) An appeal filed with the Board must be received by Department staff not more than seven (7) days after a response from the Executive Director and at least seven (7) days prior to the applicable Board meeting or if the period for an Executive Director response has elapsed the appeal can be heard by the Board if filed at least three (3) days prior to the applicable meeting.

(f) Board review of an Application related appeal will be based on the original Application.

(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))

§10.903. 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 Texas Government Code, Chapter 2306 or a rule adopted under that chapter, may be subject to:

(1) Assessment of administrative penalties in accordance with 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 of up to ten (10) points 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.

§10.904. Alternative Dispute Resolution (ADR) Policy.

In accordance with Texas Government Code, §2306.082, it is the Department's policy to encourage the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Texas Government Code, Chapter 2010, to assist in resolving disputes under the Department's jurisdiction. As described in Civil Practices and Remedies Code, Chapter 154, ADR procedures include mediation. Except as prohibited by law and the Department's Ex Parte Communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title. Any Applicant may request an informal conference with staff to attempt to resolve any appealable matter, and the Executive Director may toll the running of periods for appeal to accommodate

such meetings. In the event a successful resolution cannot be reached, the statements made in the meeting process may not be used by the Department as admissions.

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 8, 2014.

TRD-201404306
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 19, 2014
For further information, please call: (512) 475-3959

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CHAPTER 11. HOUSING TAX CREDIT PROGRAM QUALIFIED ALLOCATION PLAN

10 TAC §§11.1 - 11.3, 11.5 - 11.10

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 11, §§11.1 - 11.3 and §§11.5 - 11.10. Specifically, the amendments address §§11.1(e), 11.2, 11.3(e) and (f), 11.5, 11.6, 11.7, 11.8(b), 11.9(c)(4), (5), (7), and (d)(1), 11.9(d)(4), (e)(3) and (7), and 11.10, concerning the Housing Tax Credit Program Qualified Allocation Plan. The purpose of the proposed amendments is to implement changes that will improve the 2015 Housing Tax Credit Program. The amended sections relate to updated deadlines associated with the housing tax credit funding, clarifying language regarding the housing tax credit set-asides and the allocation process. The amended sections also include modifications to pre-application threshold requirements and there are proposed amendments to the Tenant Populations with Special Housing Needs scoring item.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments will be in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be providing updates and clarity with regard to housing tax credits; thereby enhancing the state's ability to provide decent, safe and sanitary housing administered by the Department. The average cost of filing an application is between $15,000 and $30,000, 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.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new or additional economic effect on small or micro-businesses. The average cost of filing an application is between $15,000 and $30,000, 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.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014 to October 20, 2014, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-1895. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendments 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 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 Texas Government 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 Uniform Multifamily Rules), or otherwise incorporated by reference herein collectively constitute the QAP required by Texas Government Code, §2306.67022.

(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, frequently asked questions, 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 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. 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. These rules may need to be applied to facts and circumstances not contemplated at the time of their creation and adoption. When and if such situations arise the Board will use a reasonableness standard in evaluating and addressing Applications for Housing Tax Credits.

(c) Competitive Nature of Program. Applying for competitive housing tax credits is a technical process that must be followed

completely. As a result of the highly competitive nature of applying for tax credits, 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 an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. 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. Staff, when accepting Applications, may conduct limited reviews at the time of intake as a courtesy only. If staff misses an issue in such a limited review, the fact that the Application was accepted by staff or that the issue was not identified does not operate to waive the requirement or validate the completeness, readability, or any other aspect of the Application.

(d) Definitions. The capitalized terms or phrases used herein are defined in §10.3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Any capitalized terms that are defined in Texas Government Code, Chapter 2306, §42 of the Code, or other Department rules have, when capitalized, the meanings ascribed to them therein. Defined terms when not capitalized, are to be read in context and construed according to common usage.

(e) Census Data. Where this chapter requires the use of census or American Community Survey data, the Department shall use the most current data available as of October 1, 2014 [~~2013~~], unless specifically otherwise provided in federal or state law or in the rules. The availability of more current data shall generally be disregarded.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted on or before 5:00 p.m. Central Time Zone on the day of the deadline.

§11.2. Program Calendar for Competitive Housing Tax Credits.
Non-statutory deadlines specifically listed in the Program Calendar may be extended for good cause by the Executive Director for a period of not more than five (5) business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline. Extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party.
Figure: 10 TAC §11.2

§11.3. Housing De-Concentration Factors.
(a) Two Mile Same Year Rule (Competitive HTC Only). As required by Texas Government 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.

(b) Twice the State Average Per Capita. As provided for in Texas Government 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 Round begins (or for Tax-Exempt Bond Developments at the time the Certificate of Reservation is issued by the Texas Bond Review Board), 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 Texas Government 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 Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) or Resolutions Delivery Date in §10.4 of this title (relating to Program Dates), as applicable.

(c) One Mile Three Year Rule. (§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) The development serves the same type of household as the proposed Development, regardless of whether the Development serves families, elderly individuals, or another type of household; and

(B) The 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 has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a 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 Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, 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 or prior to the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(d) 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 percent Housing Tax Credit Units per total households as established by the 5-year American Community Survey shall be considered ineligible unless:

(1) the Development is in a Place that has a population is less than 100,000; or

(2) the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and submits to the Department a resolution referencing this rule. 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. 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 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

~~[(e) Developments in Certain Sub-Regions and Counties. In the 2014 Application Round the following Counties are ineligible for Qualified Elderly Developments: Collin; Denton; Ellis; Johnson; Hays; and Guadalupe, unless the Application is made in a Rural Area. In the 2014 Application Round Regions five (5); six (6); and eight (8) are ineligible for Qualified Elderly Developments, unless the Application is made in a Rural Area. These limitations will be reassessed prior to the 2015 Application Round and are based on the fact that data evaluated by the Department has shown that in the ineligible areas identified above, the percentage of qualified elderly households residing in rent restricted tax credit assisted units exceeds the percentage of the total Qualified Elderly-eligible low income population for that area.]~~

(e) ~~[(f)]~~ Additional Phase. Applications proposing an additional phase of an existing tax credit Development serving the same Target Population, or Applications proposing Developments that are adjacent to an existing tax credit Development serving the same Target Population, or Applications that are proposing a Development serving the same Target Population on a contiguous site to another Application awarded in the same program year, 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 percent for a minimum six (6) month period as reflected in the submitted rent roll. 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.

§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(3) of this chapter (related to Pre-Application Participation).

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)) At least 10 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of §42(h)(5) of the Code and Texas Government Code, §2306.6729 and §2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this set-aside (e.g., greater than 50 percent 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 percent 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 sub-region. Commitments of Competitive Housing Tax Credits 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. Applications must also meet all requirements of Texas Government Code, §2306.111(d-2).

(3) At-Risk Set-Aside. (§2306.6714; §2306.6702)

(A) At least 15 percent 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 percent 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 must meet all the requirements of Texas Government Code, §2306.6702(a)(5). For purposes of this subparagraph, any stipulation to maintain affordability in the contract granting the subsidy, or any federally insured mortgage will be considered to be nearing expiration or nearing the end of its term if expiration will occur or the term will end within two (2) years of July 31

of the year the Application is submitted. Developments with HUD-insured mortgages qualifying as At-Risk under §2306.6702(a)(5) may be eligible if the HUD-insured mortgage is eligible for prepayment without penalty. To the extent that an Application is eligible under §2306.6705(a)(5)(B)(ii)(b) and the units being reconstructed were demolished prior to the beginning of the Application Acceptance Period, the Application will be categorized as New Construction.

(C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Texas Government Code, §2306.6702(a)(5) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. Alternatively, 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 to the Development Site (i.e. the site proposed in the tax credit Application) prior to the tax credit Commitment deadline;

(ii) the Applicant seeking tax credits must propose the same number of restricted units (e.g. the Applicant may add market rate units); and

(iii) the new Development Site must qualify for points on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria).

(D) Developments must be at risk of losing affordability from the financial benefits available to the Development and must retain or renew the existing financial benefits and affordability unless regulatory barriers necessitate elimination of a portion of that benefit for the Development. For Developments qualifying under §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25 percent of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1))

(E) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under §42 of the Code. Evidence must be provided in the form of a copy of the recorded LURA, the first years' 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.

(F) 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 ("sub-region") Housing Tax Credits in an amount consistent with the Regional Allocation Formula developed in compliance with Texas Government Code, §2306.1115. The process of awarding the funds made available within each sub-region 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 regional allocation together with other policies and purposes set out in Texas Government Code, Chapter 2306 and the Department shall provide Applicants 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 priority of Applications within a particular sub-region 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 by selecting the Development(s) that most effectively satisfy the Department's goals in meeting set-aside and regional allocation goals. Where sufficient credit becomes available to award an application on the waiting list late in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline to ensure to the fullest extent feasible that available resources are allocated by December 31.

(2) Credits Returned and National Pool Allocated After January 1. For any credits returned after January 1 and eligible for reallocation, the Department shall first return the credits to the sub-region 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 sub-region and be awarded in the collapse process to an Application in another region, sub-region 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 and awarded to the next Application on the waiting list for the state collapse.

(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 will be prioritized for assignment, with highest priority given to those identified as most competitive 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 level of priority review 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 At-Risk Set-Aside requirement;

(B) At-Risk Set-Aside Application Selection (Step 2). The second level of priority review 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 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 sub-regions to award under the remaining steps, but these funds would generally come from the statewide collapse;

(C) Initial Application Selection in Each Sub-Region (Step 3). The highest scoring Applications within each of the 26 sub-regions will then be selected provided there are sufficient funds within the sub-region 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 sub-regions;

(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 sub-region") 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 sub-region as compared to the sub-region'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 percent 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 sub-region 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 sub-region:

(i) the sub-region with no recommended At-Risk Applications from the same Application Round; and

(ii) the sub-region 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 sub-region in the State, will be combined into one "pool." The funds will be used to award the highest scoring Application (not selected in a prior step) in the most underserved sub-region in the State compared to the amount originally made available in each sub-region. This process will continue until the funds remaining are insufficient to award the next highest scoring Application in the next most underserved sub-region. In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved sub-region:

(i) the sub-region with no recommended At-Risk Applications from the same Application Round; and

(ii) the sub-region 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 percent 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 sub-region 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 Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or sub-region from which they were originally awarded. This means that 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 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. (§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 all of the requirements of this paragraph are met, be allocated separately from the current year's tax credit allocation, and shall not be subject to the requirements of paragraph (2) of this section. Requests to separately allocate returned credit 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 Department's Governing 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 after the start of construction and before issuance of Forms 8609. Force Majeure events are sudden and unforeseen 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. Force Majeure events must make construction activity impossible or materially impede its progress for a duration of at least 90 days, whether consecutive or not;

(B) Acts or events caused by the willful negligence or willful act of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by Force Majeure;

(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, 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;

(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; and

(H) The Development Owner submits a signed written request for a new Carryover Agreement concurrently with the voluntary return of the HTCs.

§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. The tie breaker factors are not intended to specifically address a tie between equally underserved sub-regions in the rural or statewide collapse.

(1) Applications scoring higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

(2) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. 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. The linear measurement will be performed from closest boundary to closest boundary.

§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 thirteen (13) state service regions, sub-regions and set-asides. Based on an understanding of the potential competition they can make a more informed decision 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, with all required information and exhibits provided pursuant to the Multifamily Programs Procedures Manual.

(1) The pre-application must be submitted, along with the required pre-application fee as described in §10.901 of this title (relating to Fee Schedule), no later than the Pre-application Final Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). If such pre-application and corresponding fee are not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

(2) The pre-application shall consist of one (1) CD-R containing a PDF copy and Excel copy submitted to the Department in the form of single files as required in the Multifamily Programs Procedures Manual.

(3) Only one pre-application may be submitted by an Applicant for each Development Site.

(4) 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 an Application, pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as a full Application, 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.

(b) Pre-Application Threshold Criteria. Pursuant to Texas Government 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 §10.204(10)[~~(9)~~] of this title (relating to Required Documentation for Application Submission). For purposes of meeting this specific requirement related to pre-application threshold criteria, proof of consideration and any documentation required for identity of interest transactions is not required at the time of pre-application submission but will be required at the time of full application submission;

(B) Funding request;

(C) Target Population;

(D) Requested set-asides (At-Risk, USDA, Nonprofit, and/or Rural);

(E) Total Number of Units proposed;

(F) Census tract number in which the Development Site is located; [~~and~~]

(G) Expected score for each of the scoring items identified in the pre-application materials; and

(H) Proposed name of ownership entity.

(2) Evidence in the form of a certification provided in the pre-application, that all of the notifications required under this paragraph have been made. (§2306.6704)

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the local elected officials, or that the Applicant has knowledge of as of the date of pre-application submission. It is the responsibility of the Applicant to identify all such Neighborhood Organizations.

(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 city are required to notify both city 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 required in the Pre-application Notification Template provided in the pre-application. The Applicant is encouraged to retain proof of delivery in the event the Department requires 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. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. 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 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) - (VI) 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, townhomes, high-rise etc.); and

(VI) the approximate total number of Units and approximate total number of low-income Units.

(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 the elderly unless 100 percent of the Units will be for Qualified Elderly and it may not indicate that it will target or prefer any subpopulation unless such targeting or preference is in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

(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 Texas Government Code, Chapter 2306, §42 of the Code, and other criteria established in a manner consistent with Chapter 2306 and §42 of the Code. 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. 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 fifteen (15) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (8 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 and Development Features (7 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 §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions) 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 three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) (1 point). An Application may qualify to receive one (1) point provided the ownership structure contains a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date, or 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 the General Partner of the Applicant, cash flow from operations, and developer fee which taken together equal at least 80 percent and no less than 5 percent for any category. For example, a HUB or Qualified Nonprofit Organization may have 20 percent ownership interest, 30 percent of the developer fee, and 30 percent of cash flow from operations. The HUB or Qualified Nonprofit Organization must also 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. 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).

(c) Criteria to serve and support Texans most in need.

(1) Income Levels of Tenants. (§§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) or (B) of this paragraph.

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs:

(i) At least 40 percent of all low-income Units at 50 percent or less of AMGI (16 points);

(ii) At least 30 percent of all low income Units at 50 percent or less of AMGI (14 points); or

(iii) At least 20 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph:

(i) At least 20 percent of all low-income Units at 50 percent or less of AMGI (16 points);

(ii) At least 15 percent of all low-income Units at 50 percent or less of AMGI (14 points); or

(iii) At least 10 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(G)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. These levels are in addition to those committed under paragraph (1) of this subsection.

(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments qualifying under the Nonprofit Set-Aside or for Developments participating in the City of Houston's Permanent Supportive Housing ("PSH") program. A Development participating in the PSH program and electing points under this subparagraph must have applied for PSH funds by the Full Application Delivery Date, must have a commitment of PSH funds by Commitment, must qualify for five (5) or seven (7) points under paragraph (4) of this subsection (relating to the Opportunity Index), and must not have more than 18 percent of the total Units restricted for Persons with Special Needs as defined under paragraph (7) of this subsection (relating to Tenant Populations with Special Housing Needs) (13 points);

(B) At least 10 percent of all low-income Units at 30 percent or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low-income Units at 30 percent or less of AMGI (11 points); or

(C) At least 5 percent of all low-income Units at 30 percent or less of AMGI (7 points).

(3) Tenant Services. (§2306.6710(b)(1)(I) and §2306.6725(a)(1)) A Supportive Housing Development qualifying under the Nonprofit Set-Aside or Developments participating in the City of Houston's Permanent Supportive Housing ("PSH") program may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points. A Development participating in the PSH program and electing eleven (11) points under this paragraph must have applied for PSH funds by the Full Application Delivery Date, must have a commitment of PSH funds by Commitment, must qualify for five (5) or seven (7) points under paragraph (4) of this subsection, and must not have more than 18 percent of the total Units restricted for Persons with Special Needs as defined under paragraph (7) of this subsection. By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants 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 minimum. No fees may be charged to the tenants 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.

(4) Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials.

(A) For Developments located in an Urban Area, if the proposed Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (or 35 percent for Developments in Regions 11 and 13), an Application may qualify to receive up to seven (7) points upon meeting the additional requirements in clauses (i) - (iv) of this subparagraph. The Department will base poverty rate on data from the five (5) year American Community Survey.

(i) the Development targets the general population or Supportive Housing, the Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (7 points);

(ii) the Development targets the general population or Supportive Housing, the Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (5 points);

(iii) any Development, regardless of population served, if the Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable (3 points); or

(iv) any Development, regardless of population served, if the Development Site is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (1 point).

(B) For Developments located in a Rural Area, an Application may qualify to receive up to seven (7) cumulative points based on median income of the area and/or proximity to the essential community assets as reflected in clauses (i) - (v) of this subparagraph if the Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (35 percent for regions 11 and 13) or within a census tract with income in the top or second quartile of median household income for the county or MSA as applicable or within the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement.

(i) The Development Site is located within the attendance zone and within one linear mile of an elementary, middle, or high school with a Met Standard rating (For purposes of this clause only, any school, regardless of the number of grades served, can count towards points. However, schools without ratings, unless paired with another appropriately rated school, or schools with a Met Alternative Standard rating, will not be considered.) (3 points);

(ii) The Development Site is within one linear mile of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program (2 points);

(iii) The Development Site is located within one linear mile of a full service grocery store (2 points);

(iv) The Development Site is located within one linear mile of a center that is licensed by the Department of Family and Protective Services to provide a child care program for infants, toddlers, and pre-kindergarten, at a minimum (2 points);

(v) The Development is a Qualified Elderly Development and the Development Site is located within one linear mile of a senior center (2 points); and/or

(vi) The Development Site is located within one linear mile of a health related facility (1 point).

(C) An elementary school attendance zone for the Development Site does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary schools that may possibly be attended by the tenants. The applicable school rating will be the 2014 [~~2013~~] accountability rating assigned by the Texas Education Agency. 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), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions.

(5) Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools that have achieved a 77 or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency, provided that the schools also have a Met Standard rating. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary, middle, or high schools, respectively, which may possibly be attended by the tenants. The applicable school rating will be the 2014 [~~2013~~] accountability rating assigned by the Texas Education Agency. 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. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with the appropriate rating (3 points); or

(B) The Development Site is within the attendance zone of an elementary school and either a middle school or high school with the appropriate rating (1 point).

(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive two (2) points for general population or Supportive Housing Developments if the Development Site is located in one of the areas described in subparagraphs (A) - (D) of this paragraph.

(A) A Colonia;

(B) An Economically Distressed Area;

(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development; or

(D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population.

(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive two (2) points by serving Tenants with Special Housing Needs. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph.

(A) Applications meeting all of the requirements in clauses (i) - (iv) of this subparagraph are eligible to receive two (2) points by committing to participate in the Department's Section 811 Project Rental Assistance Demonstration Program ("Section 811 Program"). In order to be eligible for points, Applicants must commit the specified number of units in the proposed Development or be approved by the Department to commit the same number of units in an existing Development in the Applicant's or an Affiliate's portfolio that will qualify as Section 811 Program participating units as outlined in the Department's Section 811 Program guidelines and program requirements. An Application may request a waiver from the Board for a specific requirement of the Section 811 Program on their application. However, a request for a waiver does not guarantee eligibility for points. Participation in the Section 811 Program will require execution of a Section 811 property agreement and other required documents on or before HTC Commitment. Applicants who have applied to participate under the 2014 Section 811 Program NOFA prior to their Application submission and receive an award prior to July 1, 2015 may use units identified in that Section 811 Program application to qualify for points under this paragraph, with the same number of units as would be required for the new Application. The same units cannot be used to qualify for points in more than one HTC Application. Once elected in the Application, Applicants may not withdraw their commitment to participate in the Section 811 Program unless authorized by the Board. Should an Applicant receive an award of HTCs, the Department may allow Applicants to substitute alternate units in an existing Development in the Applicant's or Affiliates' portfolio, consistent with the Department's Section 811 Program criteria, to participate in the Section 811 Program and to qualify for these points; such properties require approval by the Department to commit the same number of units in an existing Development in the Applicant's or an Affiliate's portfolio that will qualify as Section 811 Program participating units as outlined in the Department's Section 811 Program guidelines and program requirements. Applicants must commit at least 10 Units for participation in the Section 811 Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 Program guidelines and program requirements limits the Application to fewer than 10 Units. The total number of Units set-aside for persons with disabilities, including Section 811 units, cannot exceed 18% of

the total Units (for Development of 50 Units or more) or exceed 25% of the total Units (for Developments with less than 50 Units). In order to be eligible for these points, an Application is required to participate in the Section 811 Program, unless any one of the following provisions under clauses (i) - (iv) of this subparagraph are not met.

(i) The Development must not be a Qualified Elderly Development;

(ii) The Development must not be originally constructed before 1978;

(iii) The units committed to the Section 811 Program in the Development must not have any other sources of project-based rental or operating assistance; and

(iv) The Development Site must be located in one of the following areas: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Dallas-Fort Worth MSA; El Paso MSA; Houston-The Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA.

(B) Applications proposing Developments that do not meet the requirements of subparagraph (A) of this paragraph may qualify for two (2) points for meeting the requirements of this subparagraph. In order to qualify for points, Applicants must agree to set-aside [~~for Developments for which~~] at least 5 percent of the total Units [~~are set aside~~] for Persons with Special Needs. For purposes of this subparagraph [~~scoring item~~], Persons with Special Needs is defined as households where one individual has alcohol and/or drug addictions, Colonia resident, Persons with Disabilities, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and migrant farm workers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Needs, but will be required to continue to affirmatively market Units to Persons with Special Needs.

(d) Criteria promoting community support and engagement.

(1) Local Government Support. 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 [~~April 1, 2014~~] and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. 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 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. (§2306.6710(b)(1)(E)) An Application may receive up to fourteen (14) points for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located. Development funding from instrumentalities of a city or county will not qualify for points under this scoring item unless such instrumentalities first award the funds to the city or county for their administration, at least 60 percent of the governing board of the instrumentality consists of city council members from the city in which the Development Site is located (if located in a city) or county commissioners from the county in which the Development Site is located, or 100 percent of the governing board of the instrumentality is appointed by the elected officials of the city in which the Development Site is located (if located within a city) or county in which the Development Site is located. The government instrumentality providing Development funding under this scoring item may not be a Related Party to the Applicant. Development funding must be provided in the form of a construction and/or permanent loan with an interest rate no higher than 3 percent per annum and term of at least 5 years, a grant, an in-kind contribution, a contribution which will support the Development, such as vouchers, or combination thereof. Funds cannot have been provided to the Local Political Subdivision by the Applicant or a Related Party. Should the Local Political Subdivision borrow funds in order to commit funding to the Development, the Applicant or a Related Party to the Applicant can provide collateral or guarantees for the loan only to the Local Political Subdivision. HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas cannot be utilized for points under this scoring item except where the city, county, or instrumentality is an actual applicant for and subrecipient of such funds for use in providing financial support

to the proposed Development. The Applicant must provide evidence in the Application that an application or request for the development funds has been submitted in the form of an acknowledgement from the applicable city or county. The acknowledgement must also state that a final decision with regard to the awards of such funding is expected to occur no later than September 1. A firm commitment of funds is required by Commitment or points will be lost (except for Applicants electing the point under subparagraph (C) of this paragraph). While the specific source can change, the funding secured must have been eligible at the time the Application was submitted.

(A) Option for Development Sites located in the ETJ of a municipality. For an Application with a Development Site located in the ETJ of a municipality, whether located in an unincorporated Place or not, the Applicant may seek Development funding from the municipality or a qualifying instrumentality of the municipality, provided the Applicant uses the population of said municipality as the basis for determining the Application's eligible points under subparagraph (B) of this paragraph. Applicants are encouraged to contact Department staff where an Applicant is uncertain of how to determine the correct Development funding amounts or qualifying Local Political Subdivisions.

(B) Applications will qualify for points based on the amount of funds at the levels described in clauses (i) - (v) of this subparagraph. For the purpose of this calculation, the Department will use the population of the Place from which the Development Site's Rural or Urban Area designation is derived.

(i) eleven (11) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.15 in funding per Low Income Unit or $15,000 in funding per Low Income Unit;

(ii) ten (10) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.10 in funding per Low Income Unit or $10,000 in funding per Low Income Unit;

(iii) nine (9) points for a commitment by a Local Political Subdivision of the lesser of population of the Place multiplied by a factor of 0.05 in funding per Low Income Unit or $5,000 in funding per Low Income Unit;

(iv) eight (8) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.025 in funding per Low Income Unit or $1,000 in funding per Low Income Unit; or

(v) seven (7) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.01 in funding per Low Income Unit or $500 in funding per Low Income Unit.

(C) Two (2) points may be added to the points in subparagraph (B)(i) - (v) of this paragraph and subparagraph (D) of this paragraph if the Applicant provides a firm commitment for funds in the form of a resolution from the Local Political Subdivision and provides a commitment for the same source(s) at Commitment. The resolution must reflect terms that are consistent with the requirements of this paragraph.

(D) One (1) point may be added to the points in subparagraph (B)(i) - (v) of this paragraph and subparagraph (C) of this paragraph if the financing to be provided is in the form of a grant or in-kind contribution meeting the requirements of this paragraph or a permanent loan with a minimum term of fifteen (15) years, minimum amortization period of thirty (30) years, and interest rate no higher than 3 percent per annum. An Applicant must certify that they intend to maintain the Development funding for the full term of the funding, barring unanticipated events. For Applicants electing this additional point that have not yet received an award or commitment, the structure of the funds will be reviewed at Commitment for compliance with this provision.

(3) Declared Disaster Area. (§2306.6710(b)(1)) 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 Texas Government Code, §418.014.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(B); §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 existence prior to the Pre-Application Final Delivery Date, and its boundaries must contain the Development Site. In addition, the Neighborhood Organization must be on record with the state (includes the Department) or county in which the Development Site is located. Neighborhood Organizations may request to be on record with the Department for the current Application Round with the Department by submitting documentation (such as evidence of board meetings, bylaws, etc.) prior to the beginning of the Application Acceptance Period [~~by the Full Application Delivery Date~~]. The written statement must meet the requirements in subparagraph (A) of this paragraph.

(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 Development Site and that the Neighborhood Organization meets the definition pursuant to Texas Government 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 Texas Government 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 percent of the current membership of the Neighborhood Organization consists of persons residing or owning real property 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 is encouraged to be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this section, 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; and

(iii) presentation of information and response to questions at duly held meetings where such matter is considered.

(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 as identified in §11.2 of this chapter. The Neighborhood Organization expressing opposition will be given seven (7) 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.

(5) Community Support from State Representative. (§2306.6710(b)(1)(F); §2306.6725(a)(2)) Applications may receive up to eight (8) points or have deducted up to eight (8) points for this scoring item. To qualify under this paragraph letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and clearly state support for or opposition to the specific Development. 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 of this chapter. 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. Neutral letters or letters that do not specifically refer to the Development or specifically express support or opposition will receive zero (0) points. A letter that does not directly express support but expresses it indirectly by inference (e.g. "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral letter.

(6) Input from Community Organizations. Where the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization, 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 must be submitted within the Application. 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.

(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 of 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 community or civic organization must provide some documentation of its tax exempt status and its existence and 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), 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 whose boundaries,

as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to 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) Community Revitalization Plan. An Application may qualify for 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 of Region 3.

(i) An Application may qualify to receive up to six (6) points if the Development Site is located in an area targeted for revitalization in a community revitalization plan that meets the criteria described in subclauses (I) - (VI) of this clause:

(I) The community revitalization plan must have been adopted by the municipality or county in which the Development Site is located.

(II) The adopting municipality or county must have performed, in a process providing for public input, an assessment of the factors in need of being addressed as a part of such community revitalization plan. Factors assessed must include at least five (5) of the following eight (8) factors:

(-a-) adverse environmental conditions, natural or manmade, that are material in nature and are inconsistent with the general quality of life in typical average income neighborhoods. By way of example, such conditions might include significant and recurring flooding, presence of hazardous waste sites or ongoing localized emissions not under appropriate remediation, nearby heavy industrial uses, or uses presenting significant safety or noise concerns such as major thoroughfares, nearby active railways (other than commuter trains), or landing strips; significant and widespread (e.g. not localized to a small number of businesses or other buildings) rodent or vermin infestation acknowledged to present health risks requiring a concerted effort; or fire hazards;

(-b-) presence of blight, which may include excessive vacancy, obsolete land use, significant decline in property value, or other similar conditions that impede growth;

(-c-) presence of inadequate transportation or infrastructure;

(-d-) lack of accessibility to and/or presence of inadequate health care facilities, law enforcement and fire fighting facilities, social and recreational facilities, and other public facilities comparable to those typically found in neighborhoods containing comparable but unassisted housing;

(-e-) the presence of significant crime;

(-f-) the lack of or poor condition and/or performance of public education;

(-g-) the lack of local business providing employment opportunities; or

(-h-) efforts to promote diversity, including multigenerational diversity, economic diversity, etcetera, where it has been identified in the planning process as lacking.

(III) The target area must be larger than the assisted housing footprint and should be limited in size along the lines of specific neighborhoods rather than encompassing large areas of a city or county. Staff will review the target areas for presence of the factors identified in subclause (II) of this clause.

(IV) The adopted plan, taken as a whole, must be a plan that can reasonably be expected to revitalize the neighborhood and address in a substantive and meaningful way the material factors identified in subclause (II) of this clause. Generally, because revitalization must identify specific matters needing to be addressed by revitalization and provide a plan and budget specifically directed to those identified issues, revitalization will be considered distinct and separate from broader economic development efforts.

(V) The adopted plan must describe the planned budget and uses of funds to accomplish its purposes within the applicable target area. To the extent that expenditures, incurred within four (4) years prior to the beginning of the Application Acceptance Period, have already occurred in the applicable target area, a statement from a city or county official concerning the amount of the expenditure and purpose of the expenditure may be submitted.

(VI) To be eligible for points under this item, the community revitalization plan must already be in place as of the Full Application Final Delivery Date pursuant to §11.2 of this chapter evidenced by a letter from the appropriate local official stating that:

(-a-) the plan was duly adopted with the required public input processes followed;

(-b-) the funding and activity under the plan has already commenced; and

(-c-) the adopting municipality or county has no reason to believe that the overall funding for the full and timely implementation of the plan will be unavailable.

(ii) Points will be awarded based on:

(I) Applications will receive four (4) points if the applicable target area of the community revitalization plan has a total budget or projected economic value of $6,000,000 or greater; or

(II) Applications will receive two (2) points if the applicable target area of the community revitalization plan has a total budget or projected economic value of at least $4,000,000; and

(III) Applications may receive (2) points in addition to those under subclause (I) or (II) of this clause if the Development is explicitly identified by the city or county as contributing most significantly to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. A resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application (this resolution is not required at pre-application). If multiple Applications submit resolutions under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application as contributing most significantly to concerted revitalization efforts.

(B) For Developments located in Urban Areas outside of Region 3.

(i) An Application may qualify for up to six (6) points for meeting the criteria under subparagraph (A) of this paragraph (with the exception of being located in Region 3); or

(ii) An Application will qualify for four (4) points if the city or county has an existing plan for Community Develop-

ment Block Grant - Disaster Relief Program (CDBG-DR) funds that meets the requirements of subclauses (I) - (V) of this clause. To qualify for points, the Development Site must be located in the target area defined by the plan, and the Application must have a commitment of CDBG-DR funds. The plan (in its entirety) and a letter from a local government official with specific knowledge and oversight of implementing the plan are included in the Application and must:

(I) define specific target areas for redevelopment of housing that do not encompass the entire jurisdiction;

(II) be subject to administration in a manner consistent with an approved Fair Housing Activity Statement-Texas (FHAST);

(III) be subject to administration in a manner consistent with the findings of an Analysis of Impediments approved or accepted by HUD within the last three (3) calendar years or an approved Fair Housing Activity Statement-Texas (FHAST), approved by the Texas General Land Office;

(IV) certify that the plan and the Application are consistent with the adopting municipality or county's plan to affirmatively further fair housing under the Fair Housing Act; and

(V) be in place prior to the Full Application Final Delivery Date.

(C) For Developments located in a Rural Area.

(i) An Application may qualify for up to four (4) points for meeting the criteria under subparagraph (B) of this paragraph if located outside of Region 3 (with the exception of being located in an Urban Area); or

(ii) The requirements for community revitalization in a Rural Area are distinct and separate from the requirements related to community revitalization in an Urban Area in that the requirements in a Rural Area relate primarily to growth and expansion indicators. An Application may qualify for up to four (4) points if the city, county, state, or federal government has approved expansion of basic infrastructure or projects, as described in this paragraph. Approval cannot be conditioned upon the award of tax credits or on any other event (zoning, permitting, construction start of another development, etc.) not directly associated with the particular infrastructure expansion. The Applicant, Related Party, or seller of the Development Site cannot contribute funds for or finance the project or infrastructure, except through the normal and customary payment of property taxes, franchise taxes, sales taxes, impact fees and/or any other taxes or fees traditionally used to pay for or finance such infrastructure by cities, counties, state or federal governments or their related subsidiaries. The project or expansion must have been completed no more than twelve (12) months prior to the beginning of the Application Acceptance Period or have been approved and is projected to be completed within twelve (12) months from the beginning of the Application Acceptance Period. An Application is eligible for two (2) points for one of the items described in subclauses (I) - (V) of this clause or four (4) points for at least two (2) of the items described in subclauses (I) - (V) of this clause:

(I) New paved roadway (may include paving an existing non-paved road but excludes overlays or other limited improvements) or expansion of existing paved roadways by at least one lane (excluding very limited improvements such as new turn lanes or restriping), in which a portion of the new road or expansion is within one half (1/2) mile of the Development Site;

(II) New water service line (or new extension) of at least 500 feet, in which a portion of the new line is within one half (1/2) mile of the Development Site;

(III) New wastewater service line (or new extension) of at least 500 feet, in which a portion of the new line is within one half (1/2) mile of the Development Site;

(IV) Construction of a new law enforcement or emergency services station within one (1) mile of the Development Site that has a service area that includes the Development Site; and

(V) Construction of a new hospital or expansion of an existing hospital's capacity by at least 25 percent within a five (5) mile radius of the Development Site and ambulance service to and from the hospital is available at the Development Site. Capacity is defined as total number of beds, total number of rooms or total square footage of the hospital.

(iii) To qualify under clause (ii) of this subparagraph, the Applicant must provide a letter from a government official with specific knowledge of the project (or from an official with a private utility company, if applicable) which must include:

(I) the nature and scope of the project;

(II) the date completed or projected completion;

(III) source of funding for the project;

(IV) proximity to the Development Site; and

(V) the date of any applicable city, county, state, or federal approvals, if not already completed.

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) An Application may qualify to receive a maximum of eighteen (18) points for this item. 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. An acceptable form of lender approval letter is found in the application. If the letter evidences review of the Development alone it will receive sixteen (16) points. If the letter evidences review of the Development and the Principals, it will receive eighteen (18) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on either the Building Cost or the Hard Costs per square foot of the proposed Development, as originally submitted in the Application. For purposes of this paragraph, Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. 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.

(A) A high cost development is a Development that meets one of the following conditions:

(i) the Development is elevator served, meaning it is either a Qualified Elderly Development with an elevator or a Develop-

ment with one or more buildings any of which have elevators serving four or more floors;

(ii) the Development is more than 75 percent single family design;

(iii) the Development is Supportive Housing; or

(iv) the Development Site qualifies for five (5) or seven (7) 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 will be eligible for twelve (12) points if one of the following conditions is met:

(i) The Building Cost per square foot is less than $70 per square foot;

(ii) The Building Cost per square foot is less than $75 per square foot, and the Development meets the definition of a high cost development;

(iii) The Hard Cost per square foot is less than $90 per square foot; or

(iv) The Hard Cost per square foot is less than $100 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 Building Cost per square foot is less than $75 per square foot;

(ii) The Building Cost per square foot is less than $80 per square foot, and the Development meets the definition of a high cost development;

(iii) The Hard Cost per square foot is less than $95 per square foot; or

(iv) The Hard Cost per square foot is less than $105 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 Building Cost is less than $90 per square foot; or

(ii) The Hard Cost is less than $110 per square foot.

(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $100 per square foot;

(ii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $130 per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $130 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 during the Pre-Application Acceptance Period. Applications that meet the requirements described in subparagraphs (A) - (G) of this paragraph will qualify for six [~~four~~] (6 [4]) points:

(A) The total number of Units does not increase by more than ten (10) percent 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 six (6) 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; and

(G) 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 five (5) percent of the total Units are restricted to serve households at or below 30 percent 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 percent 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 8 percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than 9 percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than 10 percent 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 percent of the developer fee can be deferred. Where costs or financing 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 or Historic Preservation. (§§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 scoring item.

(A) In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Development Owners that agree to extend the affordability period for a Development to thirty-five (35) years total may receive two (2) points; or

(B) An Application includes a tax credit request amounting to less than or equal to $7,000 per HTC unit, that has received a letter from the Texas Historical Commission determining preliminary eligibility for historic (rehabilitation) tax credits and is proposing the use of historic (rehabilitation) tax credits (whether federal or state credits). At least one existing building that will be part of the Development must reasonably be expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609. An Application may qualify to receive four (4) points under this provision.

(6) 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 Texas Government 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).

(7) Funding Request Amount. An Application may qualify to receive one (1) point if the Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission, of no more than 100% of the amount available within the sub-region or set-aside as estimated by the Department as of December 1, 2014 [~~2013~~].

(f) Point Adjustments. Staff will recommend to the Board and the Board may make a deduction of up to five (5) points for any of the items listed in paragraph (1) of this subsection, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were 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 fourteen (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. (§2306.6710(b)(2))

(1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10 percent Test deadline(s) or has requested an extension of the Carryover submission deadline, the 10 percent Test deadline (relating to either submission or expenditure).

(2) If the Developer or Principal of the Applicant violates the Adherence to Obligations.

(3) Any deductions assessed by the Board for paragraph (1) or (2) of this subsection based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

§11.10. Challenges of Competitive HTC Applications.

The Department will address challenges received from unrelated entities to a specific active Application. The Department will utilize a preponderance of the evidence standard, and determinations made by the Department concerning challenges cannot be appealed by a party unrelated to the Applicant that is the subject of the challenge. The challenge process is reflected in paragraphs (1) - (13) of this section. A matter, even if raised as a challenge, that staff determines should be treated as an Administrative Deficiency will be treated and handled as an Administrative Deficiency, not as a challenge.

(1) Challenges to Applications (excluding Site Challenges) [~~The challenge~~] must be received by the Department no later than the Application Challenges Deadline as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) and must be accompanied by the corresponding non-refundable challenge processing fee as described in §10.901 of this title (relating to Fee Schedule). Challenges related to Undesirable Site Features and Undesirable Neighborhood Characteristics are due no later than the Site Challenges Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). Unless the required fee is received with the challenge, no challenge will be deemed to have been submitted, and the challenge fee must be paid for each Application challenged by a challenger.

(2) A challenge must be clearly identified as such, [~~using that word in all capital letters at the top of the page,~~] and it must state the specific identity of and contact information for the person making the challenge and, if they are acting on behalf of anyone else, on whose behalf they are acting.

(3) Challengers must provide, at the time of filing the challenge, all briefings, documentation, and other information that the challenger offers in support of the challenge. Challengers must provide sufficient credible evidence that, if confirmed, would substantiate the challenge. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered.

(4) Challenges to the financial feasibility of the proposed Development are premature unless final underwriting reports on the challenged Application have been posted to the Department's website.

(5) Challenges relating to undesirable site [~~area~~] features and undesirable neighborhood characteristics as described in §10.101(a)(3) and (4) of this title (relating to Site and Development Requirements and Restrictions) are due by the Site Challenges Delivery Date and may [~~will not be accepted unless they~~] relate to a failure to disclose characteristics described in §10.101(a)(4)(A) of this title or the presence of other characteristics that may deem the Site ineligible. [~~substantive issues not already disclosed or a material misrepresentation about a disclosed item.~~]

(6) Challengers are encouraged to be prudent in identifying issues to challenge, realizing that most issues will be identified and addressed through the routine review and Administrative Deficiency process;

(7) Once a challenge to [~~on~~] an Application has been submitted, subsequent challenges on the same Application from the same challenger will not be accepted;

(8) The Department shall promptly post all items received and purporting to be challenges and any pertinent information to its website;

(9) The Department shall notify the Applicant that a challenge was received within seven (7) days of receipt of the challenge [~~deadline~~];

(10) Where, upon review by staff, an issue is not clearly resolved, staff may send an Applicant an Administrative Deficiency notice to provide the Applicant with a specific issue in need of clarification and time to address the matter in need of clarification as allowed by the rules related to Administrative Deficiencies;

(11) The Applicant may [~~must~~] provide a response regarding the challenge and any such response must be provided within fourteen (14) days of their receipt of the challenge;

(12) The Department shall promptly post its determinations of all matters submitted as challenges. Because of statutory requirements regarding the posting of materials to be considered by the Board, staff may be required to provide information on late received items relating to challenges as handouts at a Board meeting; and

(13) Staff determinations regarding all challenges will be reported to 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 8, 2014.

TRD-201404298
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 19, 2014
For further information, please call: (512) 475-3959

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CHAPTER 12. MULTIFAMILY HOUSING REVENUE BOND RULES

10 TAC §§12.1 - 12.10

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 12, §§12.1 - 12.10, concerning the 2014 Multifamily Housing Revenue Bond Rules. The purpose of the repeal is to allow for the proposal and adoption of new sections. The proposed new Chapter 12, concerning the 2015 Multifamily Housing Revenue Bond Rules, is published concurrently with this proposed repeal in this issue of the *Texas Register.*

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal will be in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also 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 repeal will be the adoption of new rules for multifamily housing revenue bonds; providing updates and greater clarity and enhancing the state's ability to provide decent, safe and sanitary housing administered by the Department. There will not be any economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014 to October 20, 2014, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Shannon Roth, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-1895. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeal affects 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. Regulatory and Land Use Restrictions.
§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 8, 2014.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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10 TAC §§12.1 - 12.10

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 12, §§12.1 - 12.10, concerning the 2015 Multifamily Housing Revenue Bond Rules. The purpose of the proposed new rules is to implement changes that will improve the 2015 Private Activity Bond Program. The Multifamily Housing Revenue Bond Rules outline the threshold and scoring related requirements associated with private activity bond funding from the Department. The proposed repeal of existing Chapter 12 is published concurrently with this rulemaking.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections will be in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections will be in effect, the public benefit anticipated as a result of the new sections will be the adoption of new rules for multifamily housing revenue bonds; providing updates and greater clarity and thereby

enhancing the state's ability to provide decent, safe and sanitary housing administered by the Department. The average cost of filing an application is between $25,000 and $40,000, 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.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new or additional economic effect on small or micro-businesses. The average cost of filing an application is between $25,000 and $40,000, 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.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 19, 2014 to October 20, 2014, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Shannon Roth, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-1895. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 20, 2014.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

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 such Bonds pursuant to Texas Government 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 Texas Government 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 the Housing Tax Credit Program Qualified Allocation Plan) and Chapter 10 of this title (relating to Uniform Multifamily Rules) for the current program year. In general, the Applicant will be required to satisfy the requirements of the Qualified Allocation Plan ("QAP") and Uniform Multifamily Rules in effect at the time the Certificate of Reservation is issued by the Texas Bond Review Board. If the applicable QAP or Uniform Multifamily Rules contradict rules set forth in this chapter, the applicable QAP or Uniform Multifamily Rules will take precedence over the rules in this chapter. The Department encourages participation in the Bond program by working directly with Applicants, lenders, Bond Trustees, legal counsels, local and state officials and the general public to conduct business in an open, transparent and straightforward manner.

(c) Costs of Issuance. The Applicant shall be responsible for payment of all costs associated with 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 stage 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.

(e) Waivers. Requests for waivers of program rules or pre-clearance relating to Undesirable Neighborhood Characteristics pursuant to §10.101(a)(4) of this title (relating to Site and Development Requirements and Restrictions) must be made in accordance with §10.207 of this title (relating to Waiver of Rules or Pre-clearance for Applications).

§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 Texas Government Code, Chapter 2306, §§141, 142, and 145 of the Internal Revenue Code, and Chapter 10 of this title (relating to Uniform Multifamily Rules).

(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 1935, as amended.

(2) Persons with Special Needs--Shall have the meaning prescribed under Texas Government 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 and be required to maintain a debt rating the equivalent of at least an "A" rating assigned to long-term obligations by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. 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. Remedies relating to failure to maintain appropriate credit ratings shall be provided in the financing documents relating to the Development.

(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 shall also be qualified as Institutional Buyers and shall sign and deliver to the Department an investor letter in a form acceptable 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 shall carry a legend requiring any purchasers of the Bonds to 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 get a preliminary understanding of the proposed Development plan before a pre-application and corresponding fees are submitted. Information requested by the Department in the questionnaire includes, but is not limited to, the financing structure, borrower and key principals, previous housing tax credit or private activity bond experience, related party or identity of interest relationships and contemplated scope of work (if proposing Rehabilitation). 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. Prior to the submission of a pre-application, it is important 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) 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 prescribed 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 accepted by the Department. Department review at the time of the pre-application is limited and not all issues of eligibility and documentation submission requirements pursuant to Chapter 10 of this title (relating to Uniform Multifamily Rules) 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).

(c) Scoring and Ranking. The Department will rank the pre-application according to score within each priority defined by Texas Government 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 Texas Government Code, §2306.359. In the event two or more pre-applications receive the same score, the Department will use the following tie breaker factors in the order they are presented to determine which pre-application will receive preference in consideration of a Certificate of Reservation.

(1) Applications that meet any of the criteria under §11.9(c)(4) of this title (relating to Competitive HTC Selection Criteria).

(2) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. Developments awarded Housing Tax Credits but do not have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this subparagraph. The linear measurement will be performed from the closest boundary to closest boundary.

(d) Inducement Resolution. After the pre-applications have been scored and ranked, the pre-application and proposed financing structure 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. Because each Development is unique, making the final determination to issue Bonds is often dependent on the issues presented at the time the full Application is presented to the Board.

§12.5. Pre-Application Threshold Requirements.

The threshold requirements of a pre-application include the criteria listed in paragraphs (1) - (10) of this section. As the Department reviews the pre-application the assumptions as reflected in Chapter 10, 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 multifamily bond pre-application in the form prescribed by the Department;

(2) Completed Bond Review Board Residential Rental Attachment for the current program year;

(3) Site Control, evidenced by the documentation required under §10.204(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 §10.204(10) of this title at the time of Application;

(4) Zoning evidenced by the documentation required under §10.204(11) of this title;

(5) Boundary survey or plat clearly identifying the location and boundaries of the subject Property;

(6) Current market information (must support affordable rents);

(7) Local area map that shows the location of the Development Site and the location of at least six (6) community assets within a one mile radius (two miles if in a Rural Area). Only one community asset of each type will count towards the number of assets required. The mandatory community assets and specific requirements are identified in §10.101(a)(2) of this title (relating to Site and Development Requirements and Restrictions);

(8) Organization Chart showing the structure of the Development Owner and of any Developer or Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner or the Developer or Guarantor, as applicable;

(9) Evidence of Entity Registration or Reservation with the Texas Office of the Secretary of State;

(10) A certification, as provided in the pre-application, that the Applicant met the requirements and deadlines for public notifications as identified in §10.203 of this title (relating to Public Notifications (§2306.5705(9)). Notifications must not be older than three (3) months prior to the date of Application submission. Re-notification will be required by Applicants who have submitted a change in the Application, whether from pre-application to Application or as a result of an Administrative Deficiency that reflects a total Unit increase of greater than 10 percent or a 5 percent change in density (calculated as units per acre) as a result of a change in the size of the Development Site. In addition, should a change in elected official occur between the

submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official.

§12.6. Pre-Application Scoring Criteria.

The section identifies the scoring criteria used in evaluating and ranking pre-applications. The criteria identified below include those items required under Texas Government 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 percent of Units rent capped at 50 percent AMGI and the remaining 50 percent of units rents capped at 60 percent AMGI; or

(ii) Set aside 15 percent of units rent capped at 30 percent AMGI and the remaining 85 percent of units rent capped at 60 percent AMGI; or

(iii) Set aside 100 percent of units rent capped at 60 percent 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 percent of the Units capped at 60 percent 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 the Development by Square Foot. (1 point) For this item, costs shall be defined as either the Building Cost or the Hard Costs as represented in the Development Cost Schedule 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 (1) 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 Affordability Period for a Development to a total of thirty-five (35) years.

(5) Unit and Development Features. A minimum of (7 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 §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions). The amenities selected at pre-application may change at Application so long as the overall point structure remains the same. The points selected at pre-application and/or Application and corresponding list of amenities will be required to be identified in the LURA and the points selected must be maintained throughout the Compliance Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to receive 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 §10.101(b)(5) of this title. For Developments with 41 Units or more, at least two (2) of the required threshold points must come from the Green Building Features as identified in §10.101(b)(5)(C)(xxxi) of this title. The amenities must be for the benefit of all tenants and made available throughout normal business hours. If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the threshold requirement. All amenities must meet accessibility standards and spaces for activities must be sized appropriately to serve the proposed Target Population. Some amenities may be restricted to a specific Target Population. An amenity can only receive points once; therefore combined functions (a library which is part of a community room) can only receive points under one category. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the threshold test applied based on the number of Units per individual site, and will have to identify in the LURA which amenities are at each individual site.

(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) Tenant Supportive Services. (8 points) By electing points, the Applicant certifies that the Development will provide supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants 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. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. No fees may be charged to the tenants 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.

(8) Underserved Area. An Application may qualify to receive up to (2 points) for general population Developments located in a Colonia, Economically Distressed Area, or Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development.

(9) Development Support/Opposition. (Maximum +24 to -24 points) Each letter will receive a maximum of +3 to -3 and must be received ten (10) business days prior to the date of the Board meeting at which the pre-application will be considered. Letters must clearly state support or opposition to the specific Development. State Representatives or Senators as well as local elected officials to be considered are those in office at the time 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 under this exhibit. Neutral letters, letters that do not specifically refer to the Development or do not explicitly state support will receive (zero (0) points). A letter that does not directly express support but expresses it indirectly by inference (i.e., a letter that says "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral 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 (2) years or for which there has been a rent restriction requirement in the past ten (10) years may qualify for points under this item. Evidence must be submitted in the pre-application.

(11) Declared Disaster Areas. (7 points) If at the time the complete pre-application is submitted or at any time within the two-year period preceding the date of submission, the proposed Development Site is located in an area declared to be a disaster area under Texas Government Code, §418.014. This includes federal, state, and Governor declared disaster areas.

§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 §10.201 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 10 of this title (relating to Uniform Multifamily Rules). If there are changes to the Application at any point prior to closing that have an adverse effect 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 10 of this title (relating to Uniform Multifamily Rules) and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) in addition to Texas Government Code, Chapter 1372, the applicable requirements of Texas Government 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 costs, the Department's bond counsel shall draft Bond documents.

(d) Public Hearings. For every Bond issuance, the Department will hold a public hearing in order to receive comments from the public pertaining to the Development and the issuance of the Bonds. 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 contain at a minimum, a description of the Development, maximum rents and income restrictions. If the proposed Development is Rehabilitation then the presentation should include the proposed scope of work that is planned for the Development. All handouts must be submitted to the Department for review at least two (2) 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 Staff Appeals Process) and §1.8 of this title (relating to Board 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 Board Rules) and Texas Government 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 must be submitted to the Department.

§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 costs, the Department's bond counsel will draft the required 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 requirements pursuant to Chapter 10 of this title (relating to Uniform Multifamily Rules) and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) with the exception of criteria stated therein specific to the Competitive Housing Tax Credit Program. 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 §10.101 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. Regulatory and Land Use Restrictions.

(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 thirty (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 Texas Government 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:

(A) at least 20 percent 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 percent of the area median income; or

(B) at least 40 percent 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 percent of the area median income.

(2) The Development Owner must designate at the time of Application which of the two set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with Texas Government Code, §1372.0321. Units intended to satisfy set-aside requirements must be distributed evenly 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 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; provided, however, that should a tenant's income, as of the most recent determination thereof, exceed 140 percent of the applicable 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 Bracewell & Giuliani, the Department's bond counsel) and $5,000 (payable to the Texas Bond Review Board (BRB) pursuant to Texas Government Code, §1372.006(a)). These fees cover the costs of pre-application review by the Department, its bond counsel and filing fees to the BRB.

(b) Application Fees. At the time of Application the Applicant is required to submit a tax credit application fee of $30/unit and $10,000 for the bond application fee (for multiple site Applications the application fee shall be $10,000 or $30/unit, whichever is greater). 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 part of a portfolio such application fees may be reduced on a case by case basis at the discretion of the Executive Director.

(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. 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 and a Bond compliance fee equal to $25/unit (such compliance fee shall be applied to the third year following closing).

(d) Application and Issuance Fees for Refunding Applications. For refunding Applications 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 on its date of calculation and is paid as long as the Bonds are outstanding.

(f) Bond Compliance Fee. The Bond compliance monitoring fee is equal to $25/Unit.

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 8, 2014.

TRD-201404297

Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 19, 2014
For further information, please call: (512) 475-3959

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 70. TECHNOLOGY-BASED INSTRUCTION

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING THE TEXAS VIRTUAL SCHOOL NETWORK (TxVSN)

19 TAC §§70.1001, 70.1003, 70.1005, 70.1007 - 70.1009, 70.1011, 70.1019, 70.1021, 70.1025, 70.1027 - 70.1029, 70.1031, 70.1033, 70.1035

The Texas Education Agency (TEA) proposes amendments to §§70.1001, 70.1003, 70.1005, 70.1007, 70.1009, 70.1011, 70.1019, 70.1021, 70.1025, 70.1027, 70.1029, 70.1031, 70.1033, and 70.1035 and new §70.1008 and §70.1028, concerning the Texas Virtual School Network (TxVSN). The sections provide guidance for school districts, charter schools, and other entities participating in the TxVSN, in accordance with the Texas Education Code (TEC), Chapter 30A. The proposed revisions would include amendments to current rules and proposed new rules to align with requirements of House Bill (HB) 1926, 83rd Texas Legislature, Regular Session, 2013.

In 2003, the 78th Texas Legislature established the electronic course program, allowing districts to offer electronic courses through a full-time online program. TEC, Chapter 30A, State Virtual School Network, added by the 80th Texas Legislature, 2007, provided for the establishment of a state virtual school network to provide supplemental online courses to high school students. In 2009, HB 3646, 81st Texas Legislature, incorporated the electronic course program under the state virtual school network.

The TEC, §30A.051(b), authorizes the commissioner of education to adopt rules necessary to implement the state virtual school network.

HB 1926, 83rd Texas Legislature, Regular Session, 2013, made a number of changes to the TxVSN program. Changes include an expansion of the list of course providers eligible to offer courses through the TxVSN to include nonprofit or private entities and entities that provide electronic professional development courses through the TxVSN. The reasons for which a school district or charter school may deny the request for a student to take a course through the TxVSN and when a district or charter is permitted to pass the cost of a TxVSN course to the student were expanded. New requirements have been added for school districts and charters, including a requirement that they adopt written policies to provide students with the opportunity to enroll in courses through the TxVSN. The TEA is required to publish in a prominent location on the TxVSN website a list of approved courses offered through the network and to develop a comprehensive numbering system for all courses offered through the TxVSN. TxVSN central operations is required to provide for renewal of approved courses, and the informed choice report information that is required to be published on the TxVSN website has been expanded.

The proposed revisions to 19 TAC Chapter 70, Subchapter AA, would amend the following provisions.

The proposed amendment to §70.1001, Definitions, would change references from district to course provider, as applicable, and would add reference to other eligible entities.

The proposed amendment to §70.1003, Texas Virtual School Network Governance, would clarify responsibilities for central operations, including responsibility for both the TxVSN statewide course catalog and the Online School program (OLS).

The proposed amendment to §70.1005, Texas Virtual School Network Course Requirements, would clarify language and would outline requirements for renewal of course approval.

The proposed amendment to §70.1007, Texas Virtual School Network Provider District Eligibility and Program Requirements, would clarify eligibility of entities to serve as course providers and would add eligibility requirements for nonprofit and private entities and corporations. The proposed amendment would also update and clarify requirements for entities serving as TxVSN course providers. The section title would be updated.

Proposed new §70.1008, Texas Virtual School Network Statewide Course Catalog Receiver District Requirements, would add updated requirements for public school districts and charter schools that serve as TxVSN receiver districts.

The proposed amendment to §70.1009, Texas Virtual School Network Online School Eligibility, would clarify that a school district or charter school must have been approved to operate a TxVSN online school as of January 1, 2013, in order to be eligible to continue operating a TxVSN online school.

The proposed amendment to §70.1011, Texas Virtual School Network Online School Program Requirements, would update the program requirements and prohibitions for TxVSN online schools, including the addition of reporting requirements, assignment of a Texas Student Data System Unique Staff Identifier for teachers, requirements for the online school's website, and requirements for serving English language learners and students with disabilities.

The proposed amendment to §70.1019, Public or Private Institutions of Higher Education, would add the requirement that institutions of higher education use the state-assigned course identification number and course title as specified in the Public Education Information Management System data standards.

The proposed amendment to §70.1021, Private Entities Providing Online Courses, would change references from district to course provider, as applicable.

The proposed amendment to §70.1025, Statewide Course Catalog Fees, would explain when a school district or charter school is permitted to decline to pay the course costs for a TxVSN course and would update circumstances under which a school district or charter school is permitted to charge the course cost for enrollment in an electronic course through the TxVSN statewide course catalog. The proposed amendment would also address a restriction on entitlement to the benefits of the Foundation School Program.

The proposed amendment to §70.1027, Requirements for Educators of Electronic Courses, would change references from

district to course provider, as applicable, and would update requirements for TxVSN course providers related to teachers of electronic courses.

Proposed new §70.1028, Requirements for Texas Virtual School Network Educator Professional Development, would add requirements for approval of professional development courses or programs for instructors who are teaching electronic courses through the TxVSN.

The proposed amendment to §70.1029, Texas Virtual School Network Participation and Performance Standards, would require any entity that wishes to serve as a TxVSN course provider to apply for approval in accordance with guidelines established by the TEA and would require renewal of the approval every five years. The section title would be updated.

The proposed amendment to §70.1031, Informed Choice Reports, would update the information that is required to be published in informed choice reports on the TxVSN website.

The proposed amendment to §70.1033, Local Policy Regarding Electronic Courses, would add the requirement that school districts and charter schools, at least once per school year, send to a parent of each student enrolled at the middle or high school level a copy of the local policy providing the option for students to enroll in electronic courses offered through the TxVSN statewide course catalog.

The proposed amendment to §70.1035, Rights Concerning the Texas Virtual School Network, would update circumstances under which a school district or charter school is permitted to deny the request of a parent or legal guardian of a student to enroll the student in an electronic course offered through the TxVSN.

The proposed rule actions would have procedural and reporting implications. Entities seeking to serve as course providers in the TxVSN must apply for approval and must seek renewal of the initial approval every five years. Any new locally maintained paperwork requirements would support the reporting requirements in the proposed rule actions.

Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the amendments and new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule actions.

Ms. Martinez has determined that for each year of the first five years the amendments and new sections are in effect the public benefit anticipated as a result of enforcing the rule actions would be additional course options for students and flexibility in completing course requirements for graduation. There is no anticipated economic cost to persons who are required to comply with the proposed rule actions.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins September 19, 2014, and ends October 20, 2014. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-5337. 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 19, 2014.

The amendments and new sections are proposed under the Texas Education Code (TEC), §30A.051(b), which authorizes the commissioner of education to adopt rules necessary to implement the TEC, Chapter 30A, State Virtual School Network.

The amendment and new sections implement the TEC, §30A.051(b).

§70.1001. Definitions.

The following terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Electronic course--An educational course in which instruction and content are delivered primarily over the Internet, a student and teacher are in different locations for a majority of the student's instructional period, most instructional activities take place in an online environment, the online instructional activities are integral to the academic program, extensive communication between a student and a teacher and among students is emphasized, and a student is not required to be located on the physical premises of a school district or charter school. An electronic course is the equivalent of what would typically be taught in one semester. For example: English IA is treated as a single electronic course and English IB is treated as a single electronic course.

(2) Successful course completion--The term that applies when a student taking a high school course has demonstrated academic proficiency of the content for a high school course and has earned a minimum passing grade of 70% or above on a 100-point scale, as assigned by the properly credentialed online teacher(s), sufficient to earn credit for the course.

(3) Successful program completion--The term that applies when a student in Grades 3-8 has demonstrated academic proficiency and has earned a minimum passing grade of 70% or above on a 100-point scale, as assigned by the properly credentialed online teacher(s) for the educational program, sufficient for promotion to the next grade level.

(4) Texas Virtual School Network (TxVSN)--A state-led initiative for online learning rather than a telecommunications or information services network. The TxVSN is comprised of two components, the statewide course catalog and the online school program. Authorized by the Texas Education Code, Chapter 30A, the TxVSN is a partnership network administered by the Texas Education Agency (TEA) in coordination with regional education service centers (ESCs), Texas public school districts and charter schools, [~~and~~] institutions of higher education, and other eligible entities.

(5) TxVSN central operations--The regional education service center that carries out the day-to-day operations of the TxVSN, including the centralized student registration system, statewide course catalog listings, and other administrative and reporting functions.

(6) TxVSN online school--A Texas public school district or charter school that meets eligibility requirements and serves students who are enrolled full time in an approved TxVSN Online School program.

(7) TxVSN Online School (OLS) program--A full-time, virtual instructional program that is made available through an approved course provider [~~district~~] and is designed to serve students in Grades 3-12 who are not physically present at school.

(8) TxVSN course provider [~~district~~]--An entity that meets eligibility requirements and provides an electronic course through the

TxVSN. Course providers [~~Provider districts~~] include providers in the statewide course catalog and TxVSN online schools.

(9) TxVSN receiver district--A Texas public school district or charter school that has students enrolled in the school district or charter school who take one or more online courses through the TxVSN statewide course catalog.

(10) TxVSN statewide course catalog--A supplemental online high school instructional program available through approved course providers.

§70.1003. Texas Virtual School Network Governance.

(a) Administration. The Texas Education Agency (TEA) is the administering authority of the Texas Virtual School Network (TxVSN). The role of the administering authority is to:

(1) set standards of quality and ensure compliance with the Texas Education Code (TEC), §30A.051;

(2) establish the policies and procedures necessary for operation of the TxVSN; and

(3) oversee the course review process.

(b) Agency authority. The TEA may conduct routine audits, monitoring, and other investigations of TxVSN central operations, course review, [~~and~~] TxVSN course providers, [~~provider~~] and TxVSN receiver districts to determine compliance and ensure high-quality education as authorized in the TEC or other law. For audit purposes, participants must maintain documentation to support the requirements of the TxVSN program and any agreements.

(c) Central operations. The [~~For courses offered through the TxVSN statewide course catalog, the~~] TxVSN central operations shall:

(1) coordinate course registration and student enrollments for the TxVSN statewide course catalog;

(2) verify [~~ensure~~] the eligibility of TxVSN course providers in both the TxVSN statewide course catalog and the TxVSN Online School (OLS) program;

(3) publish an online listing of approved courses for both the TxVSN statewide course catalog and the TxVSN OLS program; and

(4) coordinate reporting requirements, including course completion results, parent and student surveys, and Informed Choice Reports.

§70.1005. Texas Virtual School Network Course Requirements.

(a) All electronic courses to be made available through the Texas Virtual School Network (TxVSN) shall be reviewed and approved prior to being offered.

(1) Each electronic course approved for inclusion in the TxVSN shall:

(A) be in a specific subject that is part of the required curriculum;

(B) be aligned with the Texas Essential Knowledge and Skills (TEKS) approved for implementation in a given school year for a grade level at or above Grade 3;

(C) be the equivalent in instructional rigor and scope to a course that is provided in a traditional classroom setting during:

(i) a semester of 90 instructional days; and

(ii) a school day of at least seven hours [~~that meets the minimum length of a school day~~];

(D) be led by a [~~qualified~~] teacher who meets the requirements of §70.1027 of this title (relating to Requirements for Educators of Electronic Courses) [~~and designed specifically for an online learning environment, including instructional tools, assessment features, and collaborative communication tools as appropriate~~];

(E) be designed specifically for an online learning environment, including instructional tools, assessment features, and collaborative communication tools as appropriate;

(F) [~~(E)~~] be aligned with the current International Association for K-12 Learning (iNACOL) National Standards for Quality Online Courses;

(G) [~~(F)~~] meet accessibility requirements established by the U.S. Rehabilitation Act, §508, and TxVSN accessibility guidelines; and

(H) [~~(G)~~] ensure that each student enrolled in a TxVSN electronic course takes any applicable assessment instrument required under the Texas Education Code (TEC), §39.023, according to the standard administration schedule and that each assessment is supervised by a proctor.

(2) Secondary (Grades 6-12) science courses shall include at least 40% hands-on laboratory investigations and field work using appropriate scientific inquiry as required by §74.3(b)(2)(C) of this title (relating to Description of a Required Secondary Curriculum).

(3) An Advanced Placement (AP) course must have documented approval from the College Board as an AP course prior to submission for TxVSN course review.

(4) If the TEKS with which an approved course is aligned are modified, the course provider [~~district or school~~] shall be provided the same time period to revise the course to achieve alignment with the modified TEKS as is provided for the modification of a course provided in a traditional classroom setting.

(5) An online dual credit course to be offered through [~~as part of~~] the TxVSN shall be submitted to the administering authority for review and approval prior to being offered.

(6) If the administering authority does not approve an electronic course, a course provider [~~district or school~~] may appeal to the commissioner of education.

(A) A TxVSN course provider must obtain support from the local governing body, as applicable, [~~board~~] in order to appeal to the commissioner regarding the administering authority's refusal to approve an electronic course.

(B) If the commissioner determines that the administering authority's evaluation did not follow the criteria or was otherwise irregular, the commissioner may overrule the administering authority and approve [~~place~~] the course [~~in the TxVSN course catalog~~].

(C) The commissioner's decision under this section is final and may not be appealed.

(b) A course approved to be offered through the TxVSN shall be required to be renewed for approval under one of the following circumstances, whichever period of time is shorter:

(1) in accordance with a schedule designed to coincide with revisions to the curriculum under the TEC, §28.002(a); or

(2) not later than five years from the anniversary of the previous approval for a course that does not have an end-of-course assessment and not later than ten years from the anniversary of the previous approval for a course that has an end-of-course assessment.

(c) [~~(b)~~] A Texas public school district or charter school may apply to the commissioner for a waiver of the course review requirement if the school district or charter school certifies that courses they will offer meet all of the requirements of subsection (a)(1) of this section.

(1) A school district or charter school that receives a waiver of this requirement shall ensure that students enrolled in online courses that have not gone through the course review process perform at a rate at least equal to that of the district or charter as a whole.

(2) A school district or charter school that does not maintain student performance at least equal to that of the district or charter as a whole may be required to submit courses for review as a condition of continued participation in the TxVSN.

§70.1007. Texas Virtual School Network Statewide Course Catalog Course Provider [~~District~~] Eligibility and Program Requirements.

(a) The following entities are eligible to serve as course providers in the Texas Virtual School Network (TxVSN) statewide course catalog [~~provider districts~~]:

(1) a [~~Texas~~] school district that is rated acceptable as described in the Texas Education Code (TEC), §39.054. A Texas school district may provide an electronic course through the TxVSN to:

(A) a student who is [~~students~~] enrolled in that district or school; [~~or~~]

(B) a student who is [~~students~~] enrolled in another school district or school in the state; or

(C) a student who resides in Texas who is enrolled in a school other than a public school district or charter school.

(2) a charter school that is rated acceptable [~~recognized or higher~~] as described in the TEC, [~~§39.202, except that a campus may act as a provider district to students receiving educational services under the supervision of a juvenile probation department, the Texas Juvenile Justice Department, or the Texas Department of Criminal Justice if the campus is rated acceptable under the TEC,~~] §39.054. A charter school may provide an electronic course through the TxVSN to:

(A) a student who lives [~~students~~] within [~~the school district in which the campus is located or within~~] its service area[~~, whichever is smaller~~];

(B) a student who is [~~students~~] enrolled in another school district or school in the state through an agreement with the school district in which the student resides; or

(C) a student who is [~~students~~] enrolled in another school district or school in the state if the student receives educational services under the supervision of a juvenile probation department, the Texas Juvenile Justice Department, or the Texas Department of Criminal Justice through an agreement with the applicable agency;

(3) an [~~a Texas public or private~~] institution of higher education, as defined by 20 United States Code, Section 1001 [~~that provides a course through the TxVSN statewide course catalog~~]; [~~and~~]

(4) an education service center that adheres to the general provisions of the TEC, Chapter 8; and[~~, and that provides a course through the TxVSN statewide course catalog.~~]

(5) a nonprofit entity, private entity, or corporation approved by the commissioner of education.

(A) To be approved as a TxVSN course provider, a nonprofit entity, private entity, or corporation must, in accordance with guidelines established by the Texas Education Agency and not later than six months prior to the start of each semester, provide evidence of:

(i) compliance with all applicable federal and state laws prohibiting discrimination;

(ii) financial solvency; and

(iii) prior successful experience offering online courses to middle or high school students, with demonstrated success in course completion and performance as determined by the commissioner.

(B) A nonprofit entity, private entity, or corporation is not eligible to serve as a course provider in the TxVSN Online School program.

(b) An entity other than a school district or charter school is not authorized to award course credit or a diploma for courses taken through the TxVSN.

(c) [~~(b)~~] TxVSN course providers [~~provider districts~~] shall:

(1) provide the TxVSN receiver district in which each TxVSN student is enrolled with written notice of a student's performance in the course at least once every 12 weeks;

(2) provide the TxVSN receiver district in which each TxVSN student is enrolled with written notice of a student's performance at least once every three weeks if the student's performance in the course is consistently unsatisfactory, as determined by the TxVSN course provider;

[~~(1) notify parents and students of the option to enroll in the TxVSN online school at the time and in the manner that the school district or charter school informs students and parents about instructional programs or courses offered in the district's or school's traditional classroom setting;~~]

(3) [~~(2)~~] notify students in writing upon enrollment to participate in the TxVSN course [~~online school~~] with specific dates and details regarding enrollment;

(4) [~~(3)~~] meet all federal and state requirements for educating students with disabilities;

(5) [~~(4)~~] provide a contingency plan for the continuation of instructional services to all TxVSN [~~Online School (OLS) program~~] students allowing them to complete their TxVSN courses [~~OLS program subject areas or courses~~] in the event that the contract or agreement through which the electronic courses are [~~TxVSN OLS program instructional services are~~] provided are [~~is~~] terminated or the [~~a~~] TxVSN courses become [~~OLS program subject area or course becomes~~] unavailable to students; [~~the student; and~~]

(6) [~~(5)~~] ensure a maximum class size limit of 40 students in a single section of a course and ensure that the class size does not exceed the maximum allowed by law and a charter school's charter, as applicable, whichever is less; and[~~.~~]

(7) meet all reporting requirements established by TxVSN central operations, including timely submission of student performance reports, course completion results, catalog data, data required to verify instructor qualifications, and all data necessary for the TxVSN Informed Choice Report required under §70.1031 of this title (relating to Informed Choice Reports).

§70.1008. Texas Virtual School Network Statewide Course Catalog Receiver District Requirements.

(a) Pursuant to the Texas Education Code, §26.0031, a Texas public school district and charter school shall notify parents and students of the option to enroll in the Texas Virtual School Network

(TxVSN) statewide course catalog at the time and in the manner that the school district or charter school informs students and parents about instructional programs or courses offered in the district's or school's traditional classroom setting.

(b) Each Texas public school district and charter school is eligible to serve as a receiver district in the TxVSN statewide course catalog.

(c) Each TxVSN receiver district shall:

(1) register as a receiver district with TxVSN central operations;

(2) assign a qualified staff member to serve as the TxVSN coordinator; and

(3) enroll a student who resides in Texas and who is enrolled in a school other than a public school district or charter school upon request by the student and/or parent or guardian.

(d) A TxVSN receiver district may deny a request to enroll a student in a TxVSN course if:

(1) a student attempts to enroll in a course load that is inconsistent with the student's high school graduation program or requirements for college admission or requirements for earning an industry certification;

(2) the student requests permission to enroll in a TxVSN course at a time that is inconsistent with the enrollment period established by the school district or open-enrollment charter school providing the course; or

(3) the school district or charter school offers a substantially similar course. A substantially similar course means a course that meets the definition of an electronic course in §70.1001 of this title (relating to Definitions), allows equivalent pacing and scheduling flexibility as a course offered through the TxVSN statewide course catalog, and is aligned to the Texas Essential Knowledge and Skills (TEKS) for the same Public Education Information Management System (PEIMS) course title and number.

(e) A school district or charter school from which a parent/guardian of a student requests permission to enroll the student in an electronic course offered through the TxVSN has discretion to select an approved course provider for the course in which the student will enroll based on factors, including the TxVSN Informed Choice Report.

§70.1009. Texas Virtual School Network Online School Eligibility.

(a) To be eligible to serve as a Texas Virtual School Network (TxVSN) online school, a school district or charter school shall:

(1) have a current accreditation status of Accredited as specified in §97.1055 of this title (relating to Accreditation Status);

(2) be rated acceptable as described in the Texas Education Code, §39.054;

(3) be rated at the Standard Achievement level or higher under the state financial accountability rating system as specified in §109.1003 of this title (relating to Types of Financial Accountability Ratings);

(4) have met statutory requirements for timely submission of annual audit and compliance reports, Public Education Information Management System (PEIMS) reports, and timely deposits with the Teacher Retirement System, with all records and reports reflecting satisfactory performance; [~~and~~]

(5) be in good standing with other programs, grants, and projects administered through the Texas Education Agency (TEA); and[.]

(6) have been approved to operate a TxVSN Online School (OLS) as of January 1, 2013.

(b) Based on the most recent available status as of the beginning of a school year, the TEA may suspend a TxVSN OLS [~~Online School (OLS)~~] program that no longer meets the requirements of subsection (a) of this section.

§70.1011. Texas Virtual School Network Online School Program Requirements.

(a) A Texas Virtual School Network (TxVSN) online school may serve students in Grades 3-12, but may not serve students in Kindergarten-Grade 2.

(b) A school district or charter school that operates [~~wishing to operate~~] a TxVSN online school that serves [~~in order to serve~~] students in full-time virtual instruction shall, prior to the start of each academic year, notify the Texas Education Agency (TEA) of grade levels to be served and the total number of students to be served during that academic year. A school district or charter school may not add grade levels after the start of the school year.

(c) A TxVSN online school or a school district or charter school wishing to add additional grade levels to its online program [~~begin operating a TxVSN online school~~] shall certify that the online school has courses sufficient to comprise a full instructional program for each additional grade level to be served by the online school prior to serving that grade level.

(d) School districts or charter schools approved to serve as TxVSN online schools shall follow the TEA procedures related to obtaining a campus number for the virtual campus through which they serve their TxVSN online school students.

(e) School districts and charter schools serving as TxVSN online schools shall:

(1) follow the same laws and rules that apply to traditional schools unless otherwise indicated in this chapter;

(2) verify the identity and eligibility of each student seeking to enroll full time in TxVSN online courses;

(3) notify parents and students of the option to enroll in the TxVSN online school at the time and in the manner that the school district or charter school informs students and parents about instructional programs or courses offered in the district's or school's traditional classroom setting;

(4) notify students in writing upon acceptance to participate in the TxVSN online school with specific dates and details regarding enrollment;

(5) document actual dates each student begins and ends enrollment in student data records for local recordkeeping purposes and for state funding reporting purposes;

(6) ensure that each student enrolled in the TxVSN online school takes any applicable assessment instrument required under the Texas Education Code, §39.023, according to the standard administration schedule and that each assessment is supervised by a proctor;

(7) allow access to proctored test administrations by any personnel or agent of the TEA;

(8) adopt an instructional calendar for the TxVSN online school and keep an instructional calendar for each TxVSN online

school student on file and make these records available to the TEA, upon request in the requested electronic format;

(9) meet all reporting requirements established by TxVSN central operations, including timely submission of data required to verify instructor qualifications and complete student and parent surveys and all data necessary for the TxVSN Informed Choice Report required under §70.1031 of this title (relating to Informed Choice Reports);

(10) assign each teacher that provides instruction in a TxVSN online school a Texas Student Data System Unique Staff Identifier;

(11) [~~(9)~~] meet all federal and state requirements for educating students with disabilities;

(12) [~~(10)~~] publish in a prominent location on the Internet website for the school district's or charter school's TxVSN online school: [~~Internet website an Informed Choice Report that includes all of the components required under §70.1031 of this title (relating to Informed Choice Reports);~~]

(A) a link to the TxVSN Informed Choice Report that includes all of the components required under §70.1031 of this title; and

(B) any applicable criteria for enrollment and any enrollment deadlines for each TxVSN online school campus;

(13) [~~(11)~~] provide a contingency plan for the continuation of instructional services to all TxVSN Online School (OLS) program students allowing them to complete their TxVSN OLS program subject areas or courses in the event that the contract or agreement through which the TxVSN OLS program instructional services are provided is terminated or a TxVSN OLS program subject area or course becomes unavailable to the student;

(14) [~~(12)~~] ensure a maximum class size limit of 40 students in a single section of a Grades 5-12 course and ensure that the class size does not exceed the maximum allowed by law and a charter school's charter, as applicable, whichever is less;

(15) [~~(13)~~] organize, retain in a centralized unit or office within the organizational structure of the TxVSN online school, and make available to the TEA, upon request in the requested electronic format, the following:

(A) the same financial documentation that is required of a traditional campus and documentation sufficient to demonstrate successful course completion;

(B) detailed records that support the program of instruction; and

(C) detailed records that document student participation in the TxVSN online school and grades earned;

(16) [~~(14)~~] require contractors to retain and make available to the TEA, upon request in the requested electronic format, any and all financial and programmatic records, including books, documents, papers, and records, which are directly pertinent to that specific contract for a minimum of seven years from the day the final state funding payment is made and all other pending matters are closed, including resolution of any audits that started within the seven-year retention period, in accordance with the record retention requirements for federal and state programs as mandated by the Texas State Library and Archives Commission; [~~and~~]

(17) [~~(15)~~] ensure the ongoing security of all data and its accessibility to the TEA in the requested electronic format; and[~~.~~]

(18) make decisions regarding serving students with disabilities in accordance with §89.1050 of this title (relating to The Admission, Review, and Dismissal Committee) and regarding English language learners in accordance with §89.1220 of this title (relating to Language Proficiency Assessment Committee).

(f) TxVSN online schools may:

(1) determine the number of courses a student takes at one time based on individual student needs; however, course placement decisions must enable a student to make reasonable progress toward graduation in a timely manner;

(2) lend equipment to a student and the parents/legal guardians of a student participating in the TxVSN online school for the duration of the student's enrollment in the TxVSN online school; and

(3) subsidize or reimburse a student or the parents/legal guardians of a student participating in the TxVSN online school for Internet connectivity for the duration of the student's participation in the TxVSN online school.

(g) TxVSN online schools may not:

(1) deny participation to any student based on [~~ability,~~] language or[~~,~~] disability[~~, socio-economic status, or access to or familiarity with technology required for completion of the course or instructional program~~]; or

(2) promise or provide equipment or any other thing of value to a student or a student's parent as an inducement for the student to enroll in the online school.

[~~(2) give a student or the parents/legal guardians of a student participating in the TxVSN OLS program ownership of any equipment; or~~]

[~~(3) provide payment to a student or the parents/legal guardians of a student participating in the TxVSN OLS program for:~~]

[~~(A) TxVSN OLS program subject areas or courses;~~]

[~~(B) services or materials; or~~]

[~~(C) any other purpose, other than subsidy or reimbursement for Internet connectivity for the duration of the student's participation in the TxVSN OLS program.~~]

(h) Charter schools serving as TxVSN online schools shall:

(1) operate in compliance with their charter and applicable laws, rules, and regulations;

(2) continue current education programs and activities at existing physical location(s) and offer the education program as described in the charter;

(3) obtain approval from the commissioner of education for a charter amendment to change the educational program prior to making the change in the educational program as required in §100.1033(c) of this title (relating to Charter Amendment); and

(4) count students enrolled in the TxVSN online school toward the charter's enrollment cap and ensure that the charter does not exceed their total enrollment cap.

§70.1019. Public or Private Institutions of Higher Education.

Public or private institutions of higher education participating as Texas Virtual School Network (TxVSN) course providers [~~provider districts~~] shall:

(1) serve students statewide. TxVSN student enrollments are not subject to service area priorities or restrictions;

(2) enroll students through the standardized requirements and application/enrollment process approved by TxVSN central operations or the TxVSN online school; [and]

(3) use the articulation agreement available through TxVSN central operations or the TxVSN online school; and[.]

(4) use the state-assigned course identification number and course title as specified in the Public Education Information Management System (PEIMS) data standards.

§70.1021. Private Entities Providing Online Courses.

Private entities that supply online courses offered by Texas Virtual School Network course providers [provider districts] as authorized under the Texas Education Code, Chapter 30A, do not become public schools by that relationship. Only school districts and charter schools may claim to be Texas public schools or to be accredited or approved by the Texas Education Agency or the State of Texas. The private course provider or vendor providing [of] the course may not claim those designations in its advertising and informational materials.

§70.1025. Statewide Course Catalog Fees.

(a) A Texas Virtual School Network (TxVSN) course cost may not exceed the lesser of the cost of providing the course or $400.

(b) A school district or charter school may decline to pay the course costs for a student who chooses to enroll in more than three year-long electronic courses, or the equivalent, during any school year. This does not limit the ability of the student to enroll in additional electronic courses offered through the TxVSN at the student's expense.

(c) [(b)] A school district or charter school may charge the course cost for enrollment in an electronic course provided through the TxVSN statewide course catalog to a student who:

(1) resides in Texas and is enrolled in a school district or charter school as a full-time student with [and enrolled in] a course load greater than that normally taken by students in the equivalent grade level; [or]

(2) elects to enroll in an electronic course provided through the TxVSN if the school district or charter school in which the student is enrolled declines to pay the course cost because the course exceeds the limit of three year-long courses; or

(3) [(2)] enrolls in a TxVSN course during the summer.

(d) [(c)] A school district or charter school shall charge the course cost for enrollment in an electronic course provided through the TxVSN to a student who resides in Texas and is not enrolled in a school district or charter school. A student who is not enrolled in a school district or charter school is not entitled to the benefits of the Foundation School Program.

(e) [(d)] TxVSN central operations may only accept course payment from a school district or charter school.

(f) [(e)] A school district or charter school that is not the course provider [district or charter school] may charge a student enrolled in the district or school a nominal fee, not to exceed $50, for enrollment in an electronic course provided through the TxVSN that exceeds the course load normally taken by students in the equivalent grade level. A juvenile probation department or state agency may charge a nominal fee, not to exceed $50, to a student under the supervision of the department or agency.

(g) [(f)] A course provider in the TxVSN statewide course catalog [provider district] shall receive:

(1) no more than 70% of the catalog course cost prior to a student successfully completing the course; and

(2) the remaining 30% of the catalog course cost when the student successfully completes the course.

§70.1027. Requirements for Educators of Electronic Courses.

(a) Each instructor [teacher] of an electronic course, including a dual credit course, offered through the Texas Virtual School Network (TxVSN) by a course provider [district] must be certified under the Texas Education Code (TEC), Chapter 21, Subchapter B, to teach that course and grade level or meet the credentialing requirements of the institution of higher education with which they are affiliated and that is serving as a course provider [district]. In addition, each instructor [teacher]:

(1) must:

(A) successfully complete a professional development course or program approved by TxVSN central operations before teaching an electronic course offered through the TxVSN; or

(B) have a graduate degree in online or distance learning and have demonstrated mastery of the International Association for K-12 Learning (iNACOL) National Standards for Quality Online Teaching; or

(C) have two or more years of documented experience teaching online courses for students in Grades 3-12 and have demonstrated mastery of the iNACOL National Standards for Quality Online Teaching; and

(2) must successfully complete one continuing professional development course specific to online learning every three years.

(b) Each instructor [teacher] of an electronic course, including a dual credit course, offered through the TxVSN by a course provider [district] must meet highly qualified teacher requirements under the Elementary and Secondary Education Act, as applicable.

[(c) The iNACOL National Standards for Quality Online Teaching are adopted by the commissioner of education as the objective standard criteria for quality of an electronic professional development course as required by the TEC, §30A.113.]

[(1) A school district or charter school shall submit to TxVSN central operations any course the school district or charter school seeks to provide to teachers for authorization to teach electronic courses provided through the TxVSN.]

[(2) The Texas Education Agency (TEA) shall use the most recent iNACOL National Standards for Quality Online Teaching to evaluate professional development courses submitted by a school district or charter school for approval.]

(c) [(d)] [School districts and charter schools serving as] TxVSN course providers [provider districts] shall affirm the preparedness of instructors [teachers] of TxVSN electronic courses to teach public school-age students in a highly interactive online classroom and shall:

(1) maintain records documenting:

(A) valid Texas educator certification credentials appropriate for the instructor's TxVSN assignment;

(B) [(A)] successful initial completion of TxVSN-approved professional development, evidence of prior online teaching, or a graduate degree in online or distance learning; and

(C) [(B)] instructor's [teachers'] demonstrated mastery of the iNACOL National Standards for Quality Online Teaching prior to teaching through the TxVSN;

(2) conduct and maintain records for background check;

(3) [~~(2)~~] maintain records of successful completion of continuing professional development;

(4) [~~(3)~~] maintain records documenting successful completion of TxVSN-approved professional development before the end of the school year for any instructor [~~teacher~~] who is hired after the school year has begun; and

(5) [~~(4)~~] make the records specified in this subsection available to the TEA and TxVSN central operations upon request.

§70.1028. Requirements for Texas Virtual School Network Educator Professional Development.

(a) The Texas Virtual School Network (TxVSN) central operations shall approve professional development courses or programs for instructors who are teaching electronic courses, including dual credit courses, offered through the TxVSN statewide course catalog and Online School program.

(b) A course provider shall submit to TxVSN central operations any course the provider seeks to provide to instructors for authorization to teach electronic courses provided through the TxVSN in accordance with §70.1027(a)(1)(A) of this title (relating to Requirements for Educators of Electronic Courses).

(c) The Texas Education Agency shall use the most recent International Association for K-12 Learning (iNACOL) National Standards for Quality Online Teaching to evaluate professional development courses submitted by a TxVSN course provider for approval.

§70.1029. Texas Virtual School Network Participation and Performance [~~Standards~~].

(a) A public school district or charter school, institution of higher education, regional education service center, or other entity shall apply for approval to serve as a Texas Virtual School Network (TxVSN) course provider in the statewide course catalog and/or the Online School (OLS) program in accordance with guidelines established by the Texas Education Agency.

(b) Approved course providers must apply for renewal of approval to serve as a TxVSN course provider every five years.

(c) The commissioner of education may revoke the right to participation in the TxVSN [~~Texas Virtual School Network (TxVSN)~~] based on any of the following factors:

(1) noncompliance with relevant state or federal laws or TxVSN reporting requirements;

(2) noncompliance with requirements and assurances outlined in the contractual agreements with TxVSN central operations and/or the provisions of this subsection and the Texas Education Code, Chapter 30A; or

(3) consistently poor student performance rates as evidenced by results on statewide student assessments, student withdrawal rates, student completion rates, successful completion rates, or campus accountability ratings.

§70.1031. Informed Choice Reports.

The Texas Virtual School Network (TxVSN) central operations shall maintain on the TxVSN website [~~shall include~~] Informed Choice Reports for each electronic course offered through the TxVSN. Each Informed Choice Report shall annually publish the following [~~that~~]:

(1) the entity that developed the course and the entity that provided the course;

(2) student course completion data, including withdrawal rate, completion rate, and successful completion rate;

(3) aggregate student performance on an assessment instrument administered under the Texas Education Code, §39.023, for students who completed that course;

(4) aggregate student performance on all assessment instruments administered to students who completed the course provider's courses;

(5) enrollment caps, if any, for each TxVSN online school campus;

(6) [~~(1)~~] [~~provide~~] the school year calendar for the instructional program;

(7) [~~(2)~~] a description of [~~describe~~] the instructional program;

(8) [~~(3)~~] [~~identify~~] the Learning Management System (LMS), [~~which is~~] the software application for the administration, documentation, tracking, reporting, and delivery of online education courses;

(9) [~~(4)~~] a description of [~~describe~~] each electronic subject area or course offered, including:

(A) subject area or course requirements and prerequisites, as applicable;

(B) the Public Education Information Management System (PEIMS) course title and number;

(C) the number of credits to be earned for a high school course;

(D) a course syllabus for Grades 9-12 or a course overview and lesson guide for Grades 3-8; and

(E) indication of Advanced Placement (AP), Southern Association of Colleges and Schools (SACS), and National Collegiate Athletic Association (NCAA) approval, as applicable for a high school course;

(10) the name, title, and contact information for the school district or charter school personnel responsible for overseeing the daily operations of each TxVSN online school campus;

(11) [~~(5)~~] [~~identify~~] all required materials provided by the receiver district or course provider [~~district~~] outside the LMS and all materials required to be obtained by the student;

(12) [~~(6)~~] [~~identify~~] technical system requirements, minimum bandwidth, video player, and plug-in requirements; and

(13) [~~(7)~~] [~~identify~~] software and browser compatibility needed to complete the course.

§70.1033. Local Policy Regarding Electronic Courses.

(a) Each school district and charter school shall adopt a written policy consistent with §70.1035 of this title (relating to Rights Concerning the Texas Virtual School Network) that provides students enrolled in the school district or charter school with the opportunity to enroll in courses provided through the Texas Virtual School Network statewide course catalog.

(b) A school district or charter school shall, at least once per school year, send to a parent of each student enrolled at the middle or high school level a copy of the policy adopted under this section. A district or charter school may send the policy with any other information that the district or charter school sends to a parent.

§70.1035. Rights Concerning the Texas Virtual School Network.

(a) At the time and in the manner that a school district or charter school informs students and parents about courses that are offered

in the district's or school's traditional classroom setting, the district or school shall notify parents and students of the option to enroll in an electronic course offered through the Texas Virtual School Network (TxVSN).

(b) A school district or charter school in which a student is enrolled as a full-time student may not [~~unreasonably~~] deny the request of a parent/legal guardian of a student to enroll the student in an electronic course offered through the TxVSN, unless:[~~.~~]

[~~(c) A school district or charter school is not considered to have unreasonably denied a request to enroll a student in an electronic course if:~~]

[~~(1) the district or school can demonstrate that the electronic course does not meet state standards or standards of the district or school that are of equivalent rigor as the district's or school's standards for the same course provided in a traditional classroom setting;~~]

(1) [~~(2)~~] a student attempts to enroll in a course load that is inconsistent with the student's high school graduation plan or requirements for college admission or requirements for earning an industry certification;[~~:~~]

[~~(A) is inconsistent with the student's high school graduation plan; or~~]

[~~(B) could reasonably be expected to negatively affect the student's performance on an assessment instrument administered under the Texas Education Code, §39.023; or~~]

(2) [~~(3)~~] the student requests permission to enroll in an electronic course at a time that is inconsistent [~~not consistent~~] with the enrollment period established by the TxVSN [~~school district or charter school providing the~~] course provider; or[~~.~~]

(3) the district or charter school offers a substantially similar course in accordance with §70.1008(d)(3) of this title (relating to Texas Virtual School Network Statewide Course Catalog Receiver District Requirements).

(c) [~~(d)~~] Notwithstanding subsection (b)(2) [~~(e)(3)~~] of this section, a [~~school district or charter school that provides an electronic course through the~~] TxVSN course provider shall make all reasonable efforts to accommodate the enrollment of a student in the course under special circumstances.

(d) [~~(e)~~] A parent/legal guardian may appeal to the commissioner of education a school district's or charter school's decision to deny a request to enroll a student in an electronic course offered through the TxVSN.

(1) The parent shall submit a written request to the commissioner within ten business days of receiving a final decision in the local grievance process that the student was denied the opportunity to enroll in an electronic course offered through the TxVSN in accordance with guidelines established by the Texas Education Agency.

(2) An appeal under this section shall be based on review of the local record developed in the grievance process.

(3) If the commissioner determines that a student was unreasonably denied the opportunity to enroll in an electronic course, the school district or charter school shall immediately enroll the student in the electronic course or a similar course in accordance with the enrollment windows established by the provider.

(4) The commissioner's decision under this section is final and may not be appealed.

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

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

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

The Texas Board of Architectural Examiners proposes amendments to §1.22, concerning Registration by Reciprocal Transfer; §1.43, concerning Reexamination; §1.69, concerning Education Requirements; §1.144, concerning Dishonest Practice; §1.147, concerning Professional Services Procurement Act, §1.232, concerning Board Responsibilities and proposes new §1.29, concerning Credit for Military Service.

The proposed amendment to §1.22 and new §1.29 implement Chapter 55, Texas Occupations Code, which requires regulatory boards to adopt rules giving priority to the processing of applications for reciprocal licensure to spouses of military personnel and requires regulatory boards to give military service members and veterans credit for military education, training and experience toward licensure.

The proposed amendment to §1.43 allows the board to grant an extension to the 5-year deadline for passing all parts of the architectural registration examination. The amendment would allow one or more extensions for a serious medical condition and for the commencement of active duty service in the United States military. The extension would be for the full period of the medical condition or active duty service. Currently, the rule allows one 6-month extension for the birth or adoption of a child.

The proposed amendment to §1.69 waives the continuing education requirement for initially registered and reinstated architects through December 31st of the year during which initial or reinstated registration is issued. The proposed amendment would aid in the implementation of a recently adopted modification to the continuing education reporting schedule which requires reporting on compliance over the course of the previous calendar year. The amendment would allow an exemption for Architects when renewing registration after the initial period of registration or a reinstated registration because they may not have been registered and completing continuing education during much or any of the preceding calendar year.

The proposed amendments to §1.144 define the term "intent" for purposes of prohibitions upon acting or refraining to act with the intent to defraud, mislead or create a misleading impression. The term "intent" is defined as engaging in conduct of a nature which demonstrates a conscious objective or desire to engage

in the conduct or to bring about the reasonable result of the conduct. The amendment would specify that an architect's actions are "knowing" or "with knowledge" when circumstances indicate a reasonably prudent architect would be aware of the nature of the conduct or that the circumstances exist. The term is defined for purposes of a prohibition upon architects giving testimony with actual knowledge it is false. The definitions of both terms are derived from Chapter 6 of the Texas Penal Code which defines culpable mental states for purposes of describing criminal responsibility. The rule would also amend a provision which forbids architects from giving a good or service of significant value to a governmental entity in response to a request for proposals, a request for qualifications or otherwise during the process for selecting an architect. The amendment would define the term "significant value" as the amount or extent of value which would affect the procurement process or create the appearance of obligation or bias in favor of the architect who provided the good or service.

The proposed amendments to §1.147 define the term "competitive bid" to implement the Professional Services Procurement Act which prohibits governmental entities from selecting a provider of architectural services on the basis of competitive bid. As amended, the rule would prohibit an architect from providing any fee data or any data from which the architect's fee could be extrapolated or indirectly derived, during the qualifications-based selection stage of the process for procuring architectural services.

The proposed amendments to §1.232 update the table of recommended sanctions to specify penalties for listed violations of laws enforced by the board, to clarify the description of the violations, to list offenses which had not previously been listed on the table, and to correct cross-references to rules listed in the table.

Scott Gibson, General Counsel, Texas Board of Architectural Examiners, has determined that for the first five-year period the rules are in effect, the amendments and new rule will have no significant fiscal impact upon state government and no fiscal impact on local government.

Mr. Gibson also has determined that for the first five-year period the rules are in effect the public benefit expected as a result of proposing the rules, is to provide an expedited process for military personnel, military veterans, and the spouses of military personnel to have an expedited process to become registered as architects. The public benefit that will derive from the rules includes the alleviation of the 5-year "rolling clock" rule as it applies to those who are on active duty in the military and those who have serious medical conditions. The public will also benefit from greater clarity in the rules relating to continuing education requirements, the ban upon dishonest practices, the submission of competitive bids contrary to the legislative intent of the Professional Services Procurement Act, and the table of recommended sanctions for violations of the laws relating to the practice of architecture.

The proposed rules will have no adverse impact upon those who are required to comply with them. The new rule and the amendments to the pre-existing rules will have no negative fiscal impact on small or micro-business. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

Comments may be submitted to Scott Gibson, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §1.22, §1.29

The amendments and new rule are proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code. Sections 1.22 and 1.29 are proposed pursuant to §55.006 and §55.007, Texas Occupations Code, which require state agencies to adopt rules to implement provisions relating to the reciprocal licensure of military spouses and the licensure of military personnel and veterans.

No other statutes, articles or codes are affected by the proposal.

§1.22. Registration by Reciprocal Transfer.

(a) A person may apply for architectural registration by reciprocal transfer if the person holds an architectural registration that is active and in good standing in another jurisdiction and the other jurisdiction:

(1) has licensing or registration requirements substantially equivalent to Texas registration requirements; or

(2) has entered into a reciprocity agreement with the Board that has been approved by the Governor of Texas.

(b) In order to obtain architectural registration by reciprocal transfer, an Applicant must demonstrate the following:

(1) the Applicant has:

(A) successfully completed the Architect Registration Examination (ARE) or another architectural registration examination which the National Council of Architectural Registration Boards (NCARB) has approved as conforming to NCARB's examination standards; and

(B) successfully completed the requirements of the Intern Development Program (IDP) or acquired at least three years of acceptable architectural experience following registration in another jurisdiction; or

(2) the Applicant has been given Council Certification by NCARB and such Council Certification is not currently in an expired or revoked status.

(c) Pursuant to §55.005, Texas Occupations Code, the Board shall expedite the processing of an application for architectural registration by reciprocal transfer, if the Applicant is a military spouse, and shall give priority to the applications of military spouses over other Applicants.

(d) [~~(c)~~] An Applicant for architectural registration by reciprocal transfer must remit the required registration fee to the Board within 60 days after the date of the tentative approval letter sent to the Applicant by the Board.

§1.29. Credit for Military Service.

(a) Definitions.

(1) "Military service member" means a person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(2) "Military veteran" means a person who has served in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(b) Registration eligibility requirements for applicants with military experience.

(1) Verified military service, training, or education will be credited toward the registration requirements, other than an examination requirement, of an Applicant who is a military service member or a military veteran.

(2) This subsection does not apply if the Applicant holds a restricted registration issued by another jurisdiction or has an unacceptable criminal history.

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

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Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-9040

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SUBCHAPTER C. EXAMINATION

22 TAC §1.43

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code.

No other statutes, articles or codes are affected by the proposal.

§1.43. Reexamination.

(a) A Candidate's passing grade for any section of the examination is valid for five (5) years. Each Candidate must pass all sections of the examination within five (5) years after the date the Candidate passes a section of the examination. A Candidate who does not pass all sections of the examination within five (5) years after passing a section of the examination will forfeit credit for the section of the examination passed and must pass that section of the examination again.

(b) The Board may grant extensions [~~one extension~~] to the 5-year period for completion of the examination if the [~~a~~] Candidate is unable to pass all sections of the examination within that period for the following reasons:

(1) The Candidate gave birth to, or adopted a child [~~because of the adoption or birth of a child~~] within that 5-year period; [~~.~~]

(2) The Candidate developed a serious medical condition within that 5-year period; or

(3) The Candidate commenced active duty service as a member of the United States military within that 5-year period.

(c) A Candidate may receive an [~~request one~~] extension of up to 6 months for the birth or adoption of a child by filing a written application with the Board together with any corroborating evidence immediately after the Candidate learns of the impending adoption or birth. A Candidate may receive an extension for the period of the serious medical condition or for the period of active duty military service by filing a written application with the Board together with corroborating evidence immediately after the Candidate learns of the medical condition or the commencement of active duty military service. A Candidate shall immediately notify the Board in writing when the medical condition is resolved or active duty military service ends.

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

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Cathy L. Hendricks, RID, ASID/IIDA
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Texas Board of Architectural Examiners
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For further information, please call: (512) 305-9040

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SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §1.69

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code. The amendments to §1.69 are proposed pursuant to §1051.356, Texas Occupations Code, which requires the board to administer continuing education programs for its certificate holders.

No other statutes, articles or codes are affected by the proposal.

§1.69. Continuing Education Requirements.

(a) Each Architect shall complete a minimum of 12 continuing education program hours (CEPH) in topics pertinent to the public welfare, contributing to environmental and economic sustainability, promoting public health and well-being, encouraging community building and stewardship, offering aesthetic and creative experiences and enabling people and communities to function more effectively. These topics may include the following health and safety categories:

(1) legal: laws, codes, zoning, regulations, standards, life-safety, accessibility, ethics, insurance to protect owners and public.

(2) technical: surveying, structural, mechanical, electrical, communications, fire protection, controls.

(3) environmental: energy efficiency, sustainability, natural resources, natural hazards, hazardous materials, weatherproofing, insulation.

(4) occupant comfort: air quality, lighting, acoustics, ergonomics.

(5) materials and methods: building systems, products, finishes, furnishings, equipment.

(6) preservations: historic, reuse, adaptation.

(7) pre-design: land use analysis, programming, site selection, site and soils analysis.

(8) design: urban planning, master planning, building design, site design, interiors, safety and security measures.

(9) Construction Documents: drawings, specifications, delivery methods.

(10) construction administration: contract, bidding, contract negotiations.

(b) Each Architect shall complete the minimum mandatory CEPH during the last full calendar year immediately preceding the date the Architect renews the Architect's certificate of registration. Of the 12 minimum mandatory CEPH, each Architect shall complete a minimum of one CEPH in barrier-free design and at least one CEPH in the study of Sustainable or Energy-Efficient design. One CEPH equals a minimum of 50 minutes of actual course time. No credit shall be awarded for introductory remarks, meals, breaks, or business/administration matters related to courses of study.

(c) Architects shall complete a minimum of eight CEPH in structured course study. No credit shall be awarded for the same structured course for which the Architect has claimed credit during the preceding three years except for the Texas Accessibility Academy or another similar course offered by the Texas Department of Licensing and Regulation (TDLR).

(d) Architects may complete a maximum of four CEPH in self-directed study. Self-directed study must utilize articles, monographs, or other study materials that the Architect has not previously utilized for self-directed study.

(e) The Board has final authority to determine whether to award or deny credit claimed by an Architect for continuing education activities. The following types of activities may qualify to fulfill continuing education program requirements:

(1) Attendance at courses dealing with technical architectural subjects related to the Architect's profession, ethical business practices, or new technology;

(2) Teaching architectural courses and time spent in preparation for such teaching:

(A) a maximum of four CEPH may be claimed per class hour spent teaching architectural courses;

(B) an Architect may not claim credit for teaching the same course more than once; and

(C) College or university faculty may not claim credit for teaching.

(3) Hours spent in professional service to the general public which draws upon the Architect's professional expertise, such as serving on planning commissions, building code advisory boards, urban renewal boards, or code study committees;

(4) Hours spent in architectural research which is published or formally presented to the profession or public;

(5) Hours spent in architectural self-directed study programs such as those organized, sponsored, or approved by the American Institute of Architects, the National Council of Architectural Registration Boards, or similar organizations acceptable to the Board;

(6) College or university credit courses on architectural subjects or ethical business practices; each semester credit hour shall equal one CEPH; each quarter credit hour shall equal one CEPH;

(7) One CEPH may be claimed for attendance at one full-day session of a meeting of the Texas Board of Architectural Examiners.

(f) An Architect may be exempt from continuing education requirements for any of the following reasons:

(1) An Architect shall be exempt upon initial registration and upon reinstatement of registration through December 31st of the calendar year of his/her initial or reinstated registration [~~for his/her initial registration period~~];

(2) An inactive or emeritus Architect shall be exempt for any registration period during which the Architect's registration is in inactive or emeritus status, but all continuing education credits for each period of inactive or emeritus registration shall be completed before the Architect's registration may be returned to active status;

(3) An Architect who is not a full-time member of the Armed Forces shall be exempt for any registration period during which the Architect serves on active duty in the Armed Forces of the United States for a period of time exceeding 90 consecutive days;

(4) An Architect who has an active registration in another jurisdiction that has registration requirements which are substantially equivalent to Texas registration requirements and that has a mandatory continuing education program shall be exempt from mandatory continuing education program requirements in Texas for any registration period during which the Architect satisfies such other jurisdiction's continuing education program requirements, except with regard to the requirement in Texas that each Architect complete one CEPH related to Sustainable or Energy-Efficient design; or

(5) An Architect who is, as of September 1, 1999, a full-time faculty member or other permanent employee of an institution of higher education, as defined in §61.003, Education Code, and who in such position is engaged in teaching architecture.

(g) When renewing his/her annual registration, each Architect shall attest to the Architect's fulfillment of the mandatory continuing education program requirements during the immediately preceding calendar year.

(1) Each Architect shall maintain a detailed record of the Architect's continuing education activities. Each Architect shall retain proof of fulfillment of the mandatory continuing education program requirements and shall retain the annual record of continuing education activities required by this subsection for a period of five years after the end of the registration period for which credit is claimed.

(2) Upon written request, the Board may require an Architect to produce documentation to prove that the Architect has complied with the mandatory continuing education program requirements. If acceptable documentation is not provided within 30 days of request, claimed credit may be disallowed. The Architect shall have 60 calendar days after notification of disallowance of credit to substantiate the original claim or earn other CEPH credit to fulfill the minimum requirements. Such credit shall not be counted again for another registration period.

(3) If an Architect is registered to practice more than one of the professions regulated by the Board and the Architect completes a continuing education activity that is directly related to more than one of those professions, the Architect may submit that activity for credit for all of the professions to which it relates. The Architect must maintain a separate detailed record of continuing education activities for each profession.

(4) An Architect may receive credit for up to 24 CEPH earned during any single registration period. A maximum of 12 CEPH that is not used to satisfy the continuing education requirements for a registration period may be carried forward to satisfy the continuing education requirements for the next registration period.

(h) Providing false information to the Board, failure to fulfill the annual continuing education program requirements, and failure to respond to, and comply with, audit and verification requests may result in disciplinary action by the Board.

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

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Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-9040

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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §1.144, §1.147

The amendments are proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code. The amendments to §1.144 are proposed pursuant to §1051.208, Texas Occupations Code, which requires the board to adopt standards of conduct for its certificate holders. The amendments to §1.147 are proposed pursuant to §1051.203(c), Texas Occupations Code, which requires the board to adopt rules to prohibit its certificate holders from submitting a competitive bid to or soliciting a competitive bid on behalf of a governmental entity which may not make a selection or award a contract on the basis of competitive bids under the Professional Services Procurement Act.

No other statutes, articles or codes are affected by the proposal.

§1.144. Dishonest Practice.

(a) An Architect may not directly or indirectly perform an act, omit an act or allow an omission, make an assertion, or otherwise engage in a practice with the intent to:

(1) defraud;

(2) deceive; or

(3) create a misleading impression.

(b) An Architect may not advertise in a manner which is false, misleading, or deceptive.

(c) An Architect may not directly or indirectly solicit, offer, give, or receive anything or any service of significant value as an inducement or reward to secure any specific publicly funded architectural work. An Architect may not give architectural plans, design services, pre-bond referendum services, or any other goods or services of significant value to a governmental entity in response to a request for qualifications, a request for proposals, or otherwise during the process to select an Architect to render publicly funded architectural work. The term "significant value" means any act, article, money, or other material consideration which is of such value or proportion that its offer or acceptance would affect the governmental entity's selection of an Architect or would create the appearance of an obligation or bias on the part of the governmental entity to select the Architect to perform the architectural work.

(d) An Architect serving as an expert witness is subject to discipline for committing a dishonest practice upon a finding by a court of law that the Architect:

(1) rendered testimony the Architect has actual knowledge is false; or

(2) agreed to receive payment contingent upon giving testimony that expresses a particular opinion.

(e) For purposes of this section, an Architect's conduct is intentional, or with intent, if the nature of the conduct or a reasonable result of the conduct demonstrates a conscious objective or desire to engage in the conduct or cause the result. An Architect's conduct is knowing or with knowledge, with respect to the nature of the conduct or to circumstances surrounding the conduct when a reasonably prudent Architect in the same or similar circumstances would be aware of the nature of the conduct or that the circumstances exist. An Architect acts knowingly, or with knowledge, with respect to a result of the Architect's conduct when a reasonably prudent Architect would be aware of the conduct and the conduct is reasonably certain to cause the result. An Architect's intent or knowledge may be established by circumstantial evidence.

§1.147. Professional Services Procurement Act.

An Architect shall neither submit a competitive bid to nor solicit a competitive bid on behalf of any governmental entity that is prohibited by the Professional Services Procurement Act, Subchapter A, Chapter 2254, Government Code, from making a selection or awarding a contract on the basis of competitive bids. For purposes of this section, the term "competitive bid" means information which specifies the fee charged by an Architect for a professional service, including information from which such fee may be extrapolated or indirectly determined. An Architect may disclose to a governmental entity [~~submit information related to~~] the fee for [~~monetary cost of~~] a professional service, including information found in a fee schedule, only after the governmental entity has selected the Architect on the basis of demonstrated competence and qualifications pursuant to the Professional Services Procurement Act.

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

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Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-9040

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SUBCHAPTER L. HEARINGS--CONTESTED CASES

22 TAC §1.232

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code. The amendments to §1.232 are proposed pursuant to §1051.252(a), Texas Occupations Code, which requires the board to establish a comprehensive procedure for adjudicating complaints, including sanctions.

No other statutes, articles or codes are affected by the proposal.

§1.232. Board Responsibilities.

(a) The Board shall investigate Contested Case matters and attempt to resolve Contested Cases informally as provided in Subchapter I of this chapter (relating to Disciplinary Action [~~of the Rules and Regulations of the Board~~]. However, if a Contested Case is not settled informally pursuant to Subchapter I of this chapter, it shall be referred to SOAH for a formal hearing to determine whether there has been a violation of any of the statutory provisions or rules enforced by the Board.

(b) A formal hearing shall be conducted in accordance with the Rules of Procedure of SOAH.

(c) After a formal hearing of a Contested Case, the SOAH administrative law judge who conducted the formal hearing shall prepare a proposal for decision and submit it to the Board so that the Board may render a final decision with regard to the Contested Case. The proposal for decision shall include findings of fact and conclusions of law.

(d) Any party of record in a Contested Case who is adversely affected by the proposal for decision may file exceptions and briefs within 20 days after the date of service of the proposal for decision. Replies to exceptions and briefs may be filed within 15 days after the date for the filing of exceptions and briefs. Exceptions, briefs, and replies shall be filed with the Board and copies shall be served on the administrative law judge and on all other parties in the same manner as for serving other documents in a Contested Case.

(e) Any party of record in a Contested Case may request an oral hearing before the Board. A request for an oral hearing shall be filed with the Board and copies shall be served on the administrative law judge and on all other parties in the same manner as for serving other documents in a Contested Case. The Board, in its sole discretion, shall determine whether to grant or deny a request for an oral hearing. If a request for an oral hearing is granted, each party of record shall be allotted 30 minutes to make an oral presentation to the Board.

(f) Upon the expiration of the time provided for the filing of exceptions and briefs or, if exceptions and briefs are filed, upon the 10th day following the time provided for the filing of replies to exceptions and briefs, the Board may render a decision to finally resolve a Contested Case. The Board may change a finding of fact or conclusion of law made by an administrative law judge or may vacate or modify an order issued by an administrative law judge only if the Board determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions;

(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

(g) If the Board makes a change to a finding of fact or conclusion of law or vacates or modifies an order pursuant to subsection (f) of this section, the Board must state in writing the specific reason and the legal basis for the change.

(h) The Board shall issue a written order regarding the Board's decision to finally resolve a Contested Case that is not settled informally. The written order shall include findings of fact and conclusions of law that are based on the official record of the Contested Case. The written order may adopt by reference the findings of fact and conclusions of law made by an administrative law judge and included in the proposal for decision submitted to the Board.

(i) Motions for rehearing and appeals may be filed and judicial review of final decisions of the Board may be sought pursuant to the Administrative Procedure Act. The party who appeals a final decision in a Contested Case shall be responsible for the cost of the preparation of the original or a certified copy of the record of the agency proceeding that is required to be sent to the reviewing court.

(j) The Board and the administrative law judge who presides over the formal hearing in a Contested Case shall refer to the following guidelines to determine the appropriate penalty for a violation of any of the statutory provisions or rules enforced by the Board:
Figure: 22 TAC §1.232(j)

(k) The penalty for a violation of any of the statutory provisions or rules enforced by the Board may vary from the penalty recommended in subsection (j) of this section if justified by the circumstances of the matter or the disciplinary history of the respondent.

(l) For any violation where revocation is recommended as an appropriate penalty for the violation, refusing to renew the respondent's certificate of registration also shall be an appropriate penalty for the violation.

(m) If the Board or the administrative law judge determines that an administrative penalty is the appropriate sanction for a violation, the guidelines described in §1.177 of this chapter (relating to Administrative Penalty Schedule) shall be applied to determine the amount of the administrative penalty.

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

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Cathy L. Hendricks, RID, ASID/IIDA
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For further information, please call: (512) 305-9040

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CHAPTER 3. LANDSCAPE ARCHITECTS

The Texas Board of Architectural Examiners proposes amendments to §3.22, concerning Registration by Reciprocal Transfer; §3.43, concerning Reexamination; §3.69, concerning Continuing Education Requirements; §3.144, concerning Dishonest Practice; §3.232, concerning Board Responsibilities and proposes new §3.29, concerning Credit for Military Service and proposes the repeal of §3.147, concerning Professional Services Procurement Act.

The proposed amendment to §3.22 and new §3.29 implement Chapter 55, Texas Occupations Code, which requires regulatory boards to adopt rules giving priority to the processing of applications for reciprocal licensure to spouses of military personnel and requires regulatory boards to give military service members and veterans credit for military education, training and experience toward the education and experience prerequisites for licensure.

The proposed amendment to §3.43 allows the board to grant extensions to the 5-year deadline for passing all parts of the landscape architecture registration examination. The amendment would allow one or more extensions for a serious medical condition and for active duty service in the United States military. The extension would be for the full period of the medical condition or

active duty service. Currently, the rule allows one 6-month extension for the birth or adoption of a child.

The proposed amendment to §3.69 waives the continuing education requirement for initially registered and reinstated landscape architects through the end of the calendar year of initial registration or reinstatement. The proposed amendment would aid in the implementation of a recently adopted modified continuing education reporting schedule which requires reporting on compliance over the course of the previous calendar year. A landscape architect who renews registration after the initial period of registration or after reinstatement of registration may not have been registered during much or any of the preceding calendar year and therefore would not have been fulfilling continuing education requirements during that calendar year.

The proposed amendments to §3.144 define the term "intent" for purposes of prohibitions upon acting or refraining to act with the intent to defraud, mislead or create a misleading impression. The term "intent" is defined as engaging in conduct of a nature which demonstrates a conscious objective or desire to engage in the conduct or to bring about the reasonable result of the conduct. The definition of the term is derived from Chapter 6 of the Texas Penal Code which defines culpable mental states for purposes of describing criminal responsibility. The proposed amendments also modifies a provision which prohibits landscape architects from giving a good or service of significant value to a governmental entity in response to a request for proposals, a request for qualifications or otherwise during the process for selecting a landscape architect. The amendment would define the term "significant value" for purposes of the prohibition as a level or amount of value adequate to affect the procurement process or to create the appearance of obligation or bias to select the landscape architect who provided the good or service.

The board proposes the repeal of §3.147 because the qualification-based selection process applicable to architects in the Professional Services Procurement Act does not apply to landscape architects.

The proposed amendments to §3.232 update the table of recommended sanctions to specify penalties for listed violations of laws enforced by the board, to clarify the description of the violations, to list offenses which had not previously been listed on the table, and to correct cross-references to rules listed in the table.

Scott Gibson, General Counsel, Texas Board of Architectural Examiners, has determined that for the first five-year period the proposed rules are in effect, there will be no significant fiscal impact upon state government and no fiscal impact on local government.

Mr. Gibson also has determined that for the first five-year period the proposed rules are in effect the public benefit expected as a result of proposing the rules is to provide an expedited process for military personnel, military veterans, and the spouses of military personnel to become registered as landscape architects. The public benefit that will derive from the rules includes the alleviation of the 5-year "rolling clock" rule as it applies to those who are on active duty in the military and those who have serious medical conditions. The public will also benefit from greater clarity in the rules relating to continuing education requirements, the ban upon dishonest practices, the application of the Professional Services Procurement Act, and the table of recommended sanctions for violations of the laws relating to the practice of landscape architecture.

The proposed rules will have no adverse impact upon those who are required to comply with them. The proposed new rule and the amendments to the pre-existing rules will have no negative fiscal impact on small or micro-business. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

Comments may be submitted to Scott Gibson, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §3.22, §3.29

The amendments and new rule are proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code. The amendment to §3.22 and new §3.29 are proposed pursuant to §55.006 and §55.007, Texas Occupations Code, which require state agencies to adopt rules to implement provisions relating to the reciprocal licensure of military spouses and the licensure of military personnel and veterans.

No other statutes, articles or codes are affected by the proposal.

§3.22. Registration by Reciprocal Transfer.

(a) A person may apply for landscape architectural registration by reciprocal transfer if the person holds a landscape architectural registration that is active and in good standing in another jurisdiction and the other jurisdiction:

(1) has licensing or registration requirements substantially equivalent to Texas registration requirements; or

(2) has entered into a reciprocity agreement with the Board that has been approved by the Governor of Texas.

(b) In order to obtain landscape architectural registration by reciprocal transfer, an Applicant must demonstrate the following:

(1) the Applicant has:

(A) successfully completed the Landscape Architect Registration Examination (LARE) or another landscape architectural registration examination which the Council of Landscape Architectural Registration Boards (CLARB) has approved as conforming to CLARB's examination standards or as being acceptable in lieu of the LARE; and

(B) acquired at least two (2) years of acceptable landscape architectural experience following registration in another jurisdiction; or

(2) the Applicant currently holds a Council Certificate from CLARB that is in good standing.

(c) Pursuant to §55.005, Texas Occupations Code, the Board shall expedite the processing of an application for architectural registration by reciprocal transfer, if the Applicant is a military spouse, and shall give priority to the applications of military spouses over other Applicants.

(d) [~~(c)~~] An Applicant for landscape architectural registration by reciprocal transfer must remit the required registration fee to the Board within sixty (60) days after the date of the tentative approval letter sent to the Applicant by the Board.

§3.29. Credit for Military Service.

(a) Definitions.

(1) "Military service member" means a person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(2) "Military veteran" means a person who has served in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(b) Registration eligibility requirements for applicants with military experience.

(1) Verified military service, training, or education will be credited toward the registration requirements, other than an examination requirement, of an Applicant who is a military service member or a military veteran.

(2) This subsection does not apply if the Applicant holds a restricted registration issued by another jurisdiction or has an unacceptable criminal history.

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

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Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-9040

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SUBCHAPTER C. EXAMINATION

22 TAC §3.43

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code.

No other statutes, articles or codes are affected by the proposal.

§3.43. Reexamination.

(a) A Candidate's passing grade for any section of the examination is valid for five (5) years. Each Candidate must pass all sections of the examination within five (5) years after the date the Candidate passes a section of the examination. A Candidate who does not pass all sections of the examination within five (5) years after passing a section of the examination will forfeit credit for the section of the examination passed and must pass that section of the examination again.

(b) The Board may grant extensions [~~one extension~~] to the 5-year period for completion of the examination if the [~~a~~] Candidate is unable to pass all sections of the examination within that period for the following reasons:

(1) The Candidate gave birth to, or adopted a child [~~because of the adoption or birth of a child~~] within that 5-year period; [~~.~~]

(2) The Candidate developed a serious medical condition within that 5-year period; or

(3) The Candidate commenced active duty service as a member of the United States military within that 5-year period.

(c) [~~A~~] Candidate may receive an [~~request one~~] extension of up to 6 months for the birth or adoption of a child by filing a written application with the Board together with any corroborating evidence immediately after the Candidate learns of the impending adoption or birth. A Candidate may receive an extension for the period of the serious medical condition or for the period of active duty military service by filing a written application with the Board together with corroborating evidence immediately after the Candidate learns of the medical condition or the commencement of active duty military service. A Candidate shall immediately notify the Board in writing when the medical condition is resolved or active duty military service ends.

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

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SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §3.69

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code. The amendments to §3.69 are proposed pursuant to §1051.356, Texas Occupations Code, which requires the board to administer continuing education programs for its certificate holders.

No other statutes, articles or codes are affected by the proposal.

§3.69. Continuing Education Requirements.

(a) Each Landscape Architect shall complete a minimum of 12 continuing education program hours (CEPH) in topics pertinent to the public welfare, contributing to environmental and economic sustainability, promoting public health and well-being, encouraging community building and stewardship, offering aesthetic and creative experiences and enabling people and communities to function more effectively. These topics may include the following health and safety categories:

(1) legal: laws, codes, zoning, regulations, standards, life-safety, accessibility, ethics, insurance to protect owners and public.

(2) technical: surveying, grading, drainage, site layout, selection and placement of trees and plants.

(3) environmental: sustainability, natural resources, natural hazards, design of surfaces and selection and placement of trees and plants appropriate to environmental conditions.

(4) occupant comfort: air quality, water quality, lighting, acoustics, ergonomics.

(5) materials and methods: building systems, products.

(6) preservations: historic, reuse, adaptation.

(7) pre-design: land use analysis, programming, site selection, site and soils analysis.

(8) design: urban planning, master planning, site design, interiors, safety and security measures.

(9) construction documents: drawings, specifications, delivery methods.

(10) construction administration: contract, bidding, contract negotiations.

(b) Each Landscape Architect shall complete the minimum mandatory CEPH during the last full calendar year immediately preceding the date the Landscape Architect renews the Landscape Architect's certificate of registration. Of the 12 minimum mandatory CEPH, each Landscape Architect shall complete a minimum of one CEPH in barrier-free design and at least one CEPH in the study of Sustainable or Energy-Efficient design. One CEPH equals a minimum of 50 minutes of actual course time. No credit shall be awarded for introductory remarks, meals, breaks, or business/administration matters related to courses of study.

(c) Landscape Architects shall complete a minimum of eight CEPH in structured course study. No credit shall be awarded for the same structured course for which the Landscape Architect has claimed credit during the preceding three years except for the Texas Accessibility Academy or another similar course offered by the Texas Department of Licensing and Regulation (TDLR).

(d) Landscape Architects may complete a maximum of four CEPH in self-directed study. Self-directed study must utilize articles, monographs, or other study materials that the Landscape Architect has not previously utilized for self-directed study.

(e) The Board has final authority to determine whether to award or deny credit claimed by a Landscape Architect for continuing education activities. The following types of activities may qualify to fulfill continuing education program requirements:

(1) Attendance at courses dealing with technical landscape architectural subjects related to the Landscape Architect's profession, ethical business practices, or new technology;

(2) Teaching landscape architectural courses and time spent in preparation for such teaching:

(A) a maximum of three CEPH may be claimed per class hour spent teaching landscape architectural courses;

(B) a Landscape Architect may not claim credit for teaching the same course more than once; and

(C) college or university faculty may not claim credit for teaching.

(3) Hours spent in professional service to the general public which draws upon the Landscape Architect's professional expertise, such as serving on planning commissions, building code advisory boards, urban renewal boards, or code study committees;

(4) Hours spent in landscape architectural research which is published or formally presented to the profession or public;

(5) Hours spent in landscape architectural self-directed study programs such as those organized, sponsored, or approved by the American Society of Landscape Architects, the Council of Landscape Architectural Registration Boards, or similar organizations acceptable to the Board;

(6) College or university credit courses on landscape architectural subjects or ethical business practices; each semester credit hour shall equal one CEPH; each quarter credit hour shall equal one CEPH;

(7) One CEPH may be claimed for attendance at one full-day session of a meeting of the Texas Board of Architectural Examiners.

(f) A Landscape Architect may be exempt from continuing education requirements for any of the following reasons:

(1) A Landscape Architect shall be exempt upon initial registration and upon reinstatement of registration through December 31st of the calendar year of his/her initial or reinstated registration [~~for his/her initial registration period~~];

(2) An inactive or emeritus Landscape Architect shall be exempt for any registration period during which the Landscape Architect's registration is in inactive or emeritus status, but all continuing education credits for each period of inactive or emeritus registration shall be completed before the Landscape Architect's registration may be returned to active status;

(3) A Landscape Architect who is not a full-time member of the Armed Forces shall be exempt for any registration period during which the Landscape Architect serves on active duty in the Armed Forces of the United States for a period of time exceeding 90 consecutive days;

(4) A Landscape Architect who has an active registration in another jurisdiction that has registration requirements which are substantially equivalent to Texas registration requirements and that has a mandatory continuing education program shall be exempt from mandatory continuing education program requirements in Texas for any registration period during which the Landscape Architect satisfies such other jurisdiction's continuing education program requirements, except with regard to the requirement in Texas that each Landscape Architect complete one CEPH related to Sustainable or Energy-Efficient design; or

(5) A Landscape Architect who is, as of September 1, 1999, a full-time faculty member or other permanent employee of an institution of higher education, as defined in §61.003, Education Code, and who in such position is engaged in teaching landscape architecture.

(g) When renewing his/her annual registration, each Landscape Architect shall attest to the Landscape Architect's fulfillment of the mandatory continuing education program requirements during the immediately preceding calendar year.

(1) Each Landscape Architect shall maintain a detailed record of the Landscape Architect's continuing education activities. Each Landscape Architect shall retain proof of fulfillment of the mandatory continuing education program requirements and shall retain the annual record of continuing education activities required by this subsection for a period of five years after the end of the registration period for which credit is claimed.

(2) Upon written request, the Board may require a Landscape Architect to produce documentation to prove that the Landscape Architect has complied with the mandatory continuing education program requirements. If acceptable documentation is not provided within 30 days of request, claimed credit may be disallowed. The Landscape Architect shall have 60 calendar days after notification of disallowance of credit to substantiate the original claim or earn other CEPH credit to fulfill the minimum requirements. Such credit shall not be counted again for another registration period.

(3) If a Landscape Architect is registered to practice more than one of the professions regulated by the Board and the Landscape Architect completes a continuing education activity that is directly re-

lated to more than one of those professions, the Landscape Architect may submit that activity for credit for all of the professions to which it relates. The Landscape Architect must maintain a separate detailed record of continuing education activities for each profession.

(4) A Landscape Architect may receive credit for up to 24 CEPH earned during any single registration period. A maximum of 12 CEPH that is not used to satisfy the continuing education requirements for a registration period may be carried forward to satisfy the continuing education requirements for the next registration period.

(h) Providing false information to the Board, failure to fulfill the annual continuing education program requirements, and failure to respond to, and comply with, audit and verification requests may result in disciplinary action by the Board.

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

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Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §3.144

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code. The amendments to §3.144 are proposed pursuant to §1051.208, Texas Occupations Code, which requires the board to adopt standards of conduct for its certificate holders.

No other statutes, articles or codes are affected by the proposal.

§3.144. Dishonest Practice.

(a) A Landscape Architect may not directly or indirectly perform an act, omit an act or allow an omission, make an assertion, or otherwise engage in a practice with the intent to:

(1) defraud;

(2) deceive; or

(3) create a misleading impression.

(b) A Landscape Architect may not advertise in a manner which is false, misleading, or deceptive.

(c) A Landscape Architect may not directly or indirectly solicit, offer, give, or receive anything or any service of significant value as an inducement or reward to secure any specific publicly funded landscape architectural work. A Landscape Architect may not give landscape architectural plans, design services, pre-bond referendum services, or any other goods or services of significant value to a governmental entity in response to a request for qualifications, a request for proposals, or otherwise during the process to select a Landscape Architect to render publicly funded landscape architectural work. The term "significant value" is defined to mean any act, article, money, or other material consideration which is of such value or proportion that its offer or acceptance would affect the governmental entity's selection of a Landscape Architect or would create the appearance of an obligation or bias on the part of the governmental entity to select the Landscape Architect to perform the landscape architectural work.

(d) For purposes of this section, a Landscape Architect's conduct is intentional, or with intent, if the nature of the conduct or a reasonable result of the conduct demonstrates a conscious objective or desire to engage in the conduct or cause the result. A Landscape Architect's intent or knowledge may be established by circumstantial evidence.

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

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22 TAC §3.147

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Board of Architectural Examiners or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code. The repeal of §3.147 is proposed pursuant to §2254.004, Texas Government Code, the Professional Services Procurement Act, which is limited in its application to architectural, engineering and land surveying services but not landscape architecture.

No other statutes, articles or codes are affected by the proposal.

§3.147. Professional Services Procurement Act.

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

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Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
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For further information, please call: (512) 305-9040

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SUBCHAPTER K. HEARINGS--CONTESTED CASES

22 TAC §3.232

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code. The amendments to §3.232 are proposed pursuant to §1051.252(a), Texas Occupations Code, which requires the board to establish a comprehensive procedure for adjudicating complaints, including sanctions.

No other statutes, articles or codes are affected by the proposal.

§3.232. Board Responsibilities.

(a) The Board shall investigate Contested Case matters and attempt to resolve Contested Cases informally as provided in Subchapter I of this chapter (relating to Disciplinary Action) [~~of the Rules and Regulations of the Board~~]. However, if a Contested Case is not settled informally pursuant to Subchapter I of this chapter, it shall be referred to SOAH for a formal hearing to determine whether there has been a violation of any of the statutory provisions or rules enforced by the Board.

(b) A formal hearing shall be conducted in accordance with the Rules of Procedure of SOAH.

(c) After a formal hearing of a Contested Case, the SOAH administrative law judge who conducted the formal hearing shall prepare a proposal for decision and submit it to the Board so that the Board may render a final decision with regard to the Contested Case. The proposal for decision shall include findings of fact and conclusions of law.

(d) Any party of record in a Contested Case who is adversely affected by the proposal for decision may file exceptions and briefs within 20 days after the date of service of the proposal for decision. Replies to exceptions and briefs may be filed within 15 days after the date for the filing of exceptions and briefs. Exceptions, briefs, and replies shall be filed with the Board and copies shall be served on the administrative law judge and on all other parties in the same manner as for serving other documents in a Contested Case.

(e) Any party of record in a Contested Case may request an oral hearing before the Board. A request for an oral hearing shall be filed with the Board and copies shall be served on the administrative law judge and on all other parties in the same manner as for serving other documents in a Contested Case. The Board, in its sole discretion, shall determine whether to grant or deny a request for an oral hearing. If a request for an oral hearing is granted, each party of record shall be allotted 30 minutes to make an oral presentation to the Board.

(f) Upon the expiration of the time provided for the filing of exceptions and briefs or, if exceptions and briefs are filed, upon the 10th day following the time provided for the filing of replies to exceptions and briefs, the Board may render a decision to finally resolve a Contested Case. The Board may change a finding of fact or conclusion of law made by an administrative law judge or may vacate or modify an order issued by an administrative law judge only if the Board determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions;

(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

(g) If the Board makes a change to a finding of fact or conclusion of law or vacates or modifies an order pursuant to subsection (f) of this section, the Board must state in writing the specific reason and the legal basis for the change.

(h) The Board shall issue a written order regarding the Board's decision to finally resolve a Contested Case that is not settled informally. The written order shall include findings of fact and conclusions of law that are based on the official record of the Contested Case. The written order may adopt by reference the findings of fact and conclusions of law made by an administrative law judge and included in the proposal for decision submitted to the Board.

(i) Motions for rehearing and appeals may be filed and judicial review of final decisions of the Board may be sought pursuant to the Administrative Procedure Act. The party who appeals a final decision in a Contested Case shall be responsible for the cost of the preparation of the original or a certified copy of the record of the agency proceeding that is required to be sent to the reviewing court.

(j) The Board and the administrative law judge who presides over the formal hearing in a Contested Case shall refer to the following guidelines to determine the appropriate penalty for a violation of any of the statutory provisions or rules enforced by the Board:
Figure: 22 TAC §3.232(j)

(k) The penalty for a violation of any of the statutory provisions or rules enforced by the Board may vary from the penalty recommended in subsection (j) of this section if justified by the circumstances of the matter or the disciplinary history of the respondent.

(l) For any violation where revocation is recommended as an appropriate penalty for the violation, refusing to renew the respondent's certificate of registration also shall be an appropriate penalty for the violation.

(m) If the Board or the administrative law judge determines that an administrative penalty is the appropriate sanction for a violation, the guidelines described in §3.177 shall be applied to determine the amount of the administrative penalty.

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

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CHAPTER 5. REGISTERED INTERIOR DESIGNERS

The Texas Board of Architectural Examiners proposes amendments to §5.32, concerning Registration by Reciprocal Transfer; §5.53,concering Reexamination; §5.79, concerning Continuing Education Requirements; §5.154, concerning Dishonest Practice; §5.242, concerning Board Responsibilities and proposes new §5.39, concerning Credit for Military Service

The proposed amendments to §5.32 and new §5.39 implement Chapter 55, Texas Occupations Code, which requires regulatory boards to adopt rules giving priority to the processing of applications for reciprocal licensure to spouses of military personnel and requires regulatory boards to give military service members and

veterans credit for military education, training and experience toward the education and experience prerequisites for licensure.

The proposed amendments to §5.53 allows the board to grant extensions to the 5-year deadline for passing all parts of the NCIDQ examination. The amendment would allow one or more extensions for a serious medical condition and for active duty service in the United States military. The extension would be for the full period of the medical condition or active duty service. Currently, the rule allows one 6-month extension for the birth or adoption of a child.

The proposed amendments to §5.79 waives the continuing education requirement for initially registered and reinstated registered interior designers through the calendar year of initial registration or reinstatement. The proposed amendment would aid in the implementation of a recently adopted modified continuing education reporting schedule which requires reporting on compliance over the course of the previous calendar year. A registered interior designer who renews registration after the initial period of registration or after reinstatement of registration may not have been registered during much or any of the preceding calendar year and therefore would not have been fulfilling continuing education requirements during that calendar year.

The proposed amendments to §5.154 define the term "intent" for purposes of prohibitions upon acting or refraining to act with the intent to defraud, mislead or create a misleading impression. The term "intent" is defined as engaging in conduct of a nature which demonstrates a conscious objective or desire to engage in the conduct or to bring about the reasonable result of the conduct. The definition of the term is derived from Chapter 6 of the Texas Penal Code which defines culpable mental states for purposes of describing criminal responsibility. The proposed amendment also defines the term "significant value" for purposes of a prohibition on giving goods or services of significant value to a governmental entity during the governmental entity's process to procure interior design services. The term "significant value" is defined as such value as to affect the procurement process or create the appearance of obligation or bias to select the registered interior designer who provided the good or service.

The proposed amendments to §5.242 update the table of recommended sanctions to specify penalties for listed violations of laws enforced by the board, to clarify the description of the violations, to list offenses which had not previously been listed on the table, and to correct cross-references to rules listed in the table.

Scott Gibson, General Counsel, Texas Board of Architectural Examiners, has determined that for the first five-year period the rules are in effect, the proposal will have no significant fiscal impact upon state government and no fiscal impact on local government.

Mr. Gibson also has determined that for the first five-year period the rules are in effect the public benefit expected as a result of the proposal, is to provide an expedited process for military personnel, military veterans, and the spouses of military personnel to become registered interior designers. The public benefit that will derive from the rules includes the alleviation of the 5-year "rolling clock" rule as it applies to those who are on active duty in the military and those who have serious medical conditions. The public will also benefit from greater clarity in the rules relating to continuing education requirements, the ban upon dishonest practices, and the table of recommended sanctions for violations of the laws relating to the practice of registered interior designers.

The proposed rules will have no adverse impact upon those who are required to comply with them. The proposed new rule and the amendments to the pre-existing rules will have no negative fiscal impact on small or micro-business. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

Comments may be submitted to Scott Gibson, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §5.32, §5.39

The amendments and new rule are proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code. The amendment to §5.32 and new §5.39 are proposed pursuant to §55.006 and §55.007, Texas Occupations Code, which require state agencies to adopt rules to implement provisions relating to the reciprocal licensure of military spouses and the licensure of military personnel and veterans.

No other statutes, articles or codes are affected by the proposal.

§5.32. Registration by Reciprocal Transfer.

(a) A person may apply for Interior Design registration by reciprocal transfer if the person holds an interior design registration that is active and in good standing in another jurisdiction and the other jurisdiction:

(1) has licensing or registration requirements substantially equivalent to Texas registration requirements; or

(2) has entered into a reciprocity agreement with the Board that has been approved by the Governor of Texas.

(b) In order to obtain Interior Design registration by reciprocal transfer, an Applicant must demonstrate that the Applicant has:

(1) successfully completed the NCIDQ examination or another Interior Design registration examination which the National Council for Interior Design Qualification (NCIDQ) has approved as conforming to NCIDQ's examination standards or as being acceptable in lieu of the NCIDQ examination; and

(2) acquired at least two years of acceptable Interior Design experience following registration in another jurisdiction.

(c) Pursuant to §55.005, Texas Occupations Code, the Board shall expedite the processing of an application for Interior Design registration by reciprocal transfer, if the Applicant is a military spouse, and shall give priority to the applications of military spouses over other Applicants.

(d) [~~(c)~~] An Applicant for Interior Design registration by reciprocal transfer must remit the required registration fee to the Board within 60 days after the date of the tentative approval letter sent to the Applicant by the Board.

§5.39. Credit for Military Service.

(a) Definitions.

(1) "Military service member" means a person who is currently serving in the armed forces of the United States, in a reserve

component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(2) "Military veteran" means a person who has served in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(b) Registration eligibility requirements for applicants with military experience.

(1) Verified military service, training, or education will be credited toward the registration requirements, other than an examination requirement, of an Applicant who is a military service member or a military veteran.

(2) This subsection does not apply if the Applicant holds a restricted registration issued by another jurisdiction or has an unacceptable criminal history.

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

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SUBCHAPTER C. EXAMINATION

22 TAC §5.53

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code.

No other statutes, articles or codes are affected by the proposal.

§5.53. Reexamination.

(a) A Candidate's passing grade for any section of the examination is valid for five (5) years. Each Candidate must pass all sections of the examination within five (5) years after the date the Candidate passes a section of the examination. A Candidate who does not pass all sections of the examination within five (5) years after passing a section of the examination will forfeit credit for the section of the examination passed and must pass that section of the examination again.

(b) The Board may grant extensions [~~one extension~~] to the 5-year period for completion of the examination if the [~~a~~] Candidate is unable to pass all sections of the examination within that period for the following reasons:

(1) The Candidate gave birth to, or adopted a child [~~because of the adoption or birth of a child~~] within that 5-year period; [~~.~~]

(2) The Candidate developed a serious medical condition within that 5-year period; or

(3) The Candidate commenced active duty service as a member of the United States military within that 5-year period.

(c) [~~A~~] Candidate may receive an [~~request one~~] extension of up to 6 months for the birth or adoption of a child by filing a written application with the Board together with any corroborating evidence immediately after the Candidate learns of the impending adoption or birth. A Candidate may receive an extension for the period of the serious medical condition or for the period of active duty military service by filing a written application with the Board together with corroborating evidence immediately after the Candidate learns of the medical condition or the commencement of active duty military service. A Candidate shall immediately notify the Board in writing when the medical condition is resolved or active duty military service ends.

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

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Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-9040

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SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §5.79

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code. The amendments to §5.79 are proposed pursuant to §1051.356, Texas Occupations Code, which requires the board to administer continuing education programs for its certificate holders.

No other statutes, articles or codes are affected by the proposal.

§5.79. Continuing Education Requirements.

(a) Each Registered Interior Designer shall complete a minimum of 12 continuing education program hours (CEPH) in topics pertinent to the public welfare, contributing to environmental and economic sustainability, promoting public health and well-being, encouraging community building and stewardship, offering aesthetic and creative experiences and enabling people and communities to function more effectively. These topics may include the following health and safety categories:

(1) legal: laws, codes, zoning, regulations, standards, life-safety, accessibility, ethics, insurance to protect owners and public.

(2) technical: structural, mechanical, electrical, communications, fire protection, controls.

(3) environmental: energy efficiency, sustainability, natural resources, natural hazards, hazardous materials, weatherproofing, insulation.

(4) occupant comfort: air quality, lighting, acoustics, ergonomics.

(5) materials and methods: building systems, products, finishes, furnishings, equipment.

(6) preservations: historic, reuse, adaptation.

(7) pre-design: programming, project analysis, survey of existing conditions, including the materials and configuration of the interior space of a project.

(8) design: interior building design, interior specifications, accessibility, safety, and security measures.

(9) Construction Documents: drawings, specifications and other materials within the definition of the term "Construction Document".

(10) construction administration: contract, bidding, and contract negotiations.

(b) Each Registered Interior Designer shall complete the minimum mandatory CEPH during the last full calendar year immediately preceding the date the Registered Interior Designer renews the Registered Interior Designer's certificate of registration. Of the 12 minimum mandatory CEPH, each Registered Interior Designer shall complete a minimum of one CEPH in barrier-free design and at least one CEPH in the study of Sustainable or Energy-Efficient design. One CEPH equals a minimum of 50 minutes of actual course time. No credit shall be awarded for introductory remarks, meals, breaks, or business/administration matters related to courses of study.

(c) Registered Interior Designers shall complete a minimum of eight CEPH in structured course study. No credit shall be awarded for the same structured course for which the Registered Interior Designer has claimed credit during the preceding three years except for the Texas Accessibility Academy or another similar course offered by the Texas Department of Licensing and Regulation (TDLR).

(d) Registered Interior Designers may complete a maximum of four CEPH in self-directed study. Self-directed study must utilize articles, monographs, or other study materials that the Registered Interior Designer has not previously utilized for self-directed study.

(e) The Board has final authority to determine whether to award or deny credit claimed by a Registered Interior Designer for continuing education activities. The following types of activities may qualify to fulfill continuing education program requirements:

(1) Attendance at courses dealing with technical Interior Design subjects related to the Registered Interior Designer's profession, ethical business practices, or new technology;

(2) Teaching Interior Design courses and time spent in preparation for such teaching:

(A) a maximum of four CEPH may be claimed per class hour spent teaching Interior Design courses;

(B) a Registered Interior Designer may not claim credit for teaching the same course more than once; and

(C) college or university faculty may not claim credit for teaching.

(3) Hours spent in professional service to the general public which draws upon the Registered Interior Designer's professional expertise, such as serving on planning commissions, building code advisory boards, urban renewal boards, or code study committees;

(4) Hours spent in Interior Design research which is published or formally presented to the profession or public;

(5) Hours spent in Interior Design self-directed study programs such as those organized, sponsored, or approved by the American Society of Interior Design, the International Interior Design Association, the National Council for Interior Design Education and Research, or similar organizations acceptable to the Board;

(6) College or university credit courses on Interior Design subjects or ethical business practices; each semester credit hour shall equal one CEPH; each quarter credit hour shall equal one;

(7) One CEPH may be claimed for attendance at one full-day session of a meeting of the Texas Board of Architectural Examiners.

(f) A Registered Interior Designer may be exempt from continuing education requirements for any of the following reasons:

(1) A Registered Interior Designer shall be exempt upon initial registration and upon reinstatement of registration through December 31st of the calendar year of his/her initial or reinstated registration [~~for his/her initial registration period~~];

(2) An inactive or emeritus Registered Interior Designer shall be exempt for any registration period during which the Registered Interior Designer's registration is in inactive or emeritus status, but all continuing education credits for each period of inactive or emeritus registration shall be completed before the Registered Interior Designer's registration may be returned to active status;

(3) A Registered Interior Designer who is not a full-time member of the Armed Forces shall be exempt for any registration period during which the Registered Interior Designer serves on active duty in the Armed Forces of the United States for a period of time exceeding 90 consecutive days;

(4) A Registered Interior Designer who has an active registration in another jurisdiction that has registration requirements which are substantially equivalent to Texas registration requirements and that has a mandatory continuing education program shall be exempt from mandatory continuing education program requirements in Texas for any registration period during which the Registered Interior Designer satisfies such other jurisdiction's continuing education program requirements, except with regard to the requirement in Texas that each Registered Interior Designer complete one CEPH related to Sustainable or Energy-Efficient design; or

(5) A Registered Interior Designer who is, as of September 1, 1999, a full-time faculty member or other permanent employee of an institution of higher education, as defined in §61.003, Education Code, and who in such position is engaged in teaching Interior Design.

(g) When renewing his/her annual registration, each Registered Interior Designer shall attest to the Registered Interior Designer's fulfillment of the mandatory continuing education program requirements during the immediately preceding calendar year.

(1) Each Registered Interior Designer shall maintain a detailed record of the Registered Interior Designer's continuing education activities. Each Registered Interior Designer shall retain proof of fulfillment of the mandatory continuing education program requirements and shall retain the annual record of continuing education activities required by this subsection for a period of five years after the end of the registration period for which credit is claimed.

(2) Upon written request, the Board may require a Registered Interior Designer to produce documentation to prove that the Registered Interior Designer has complied with the mandatory continuing education program requirements. If acceptable documentation is not provided within 30 days of request, claimed credit may be disallowed. The Registered Interior Designer shall have 60 calendar days after notification of disallowance of credit to substantiate the original claim or earn other CEPH credit to fulfill the minimum requirements. Such credit shall not be counted again for another registration period.

(3) If a Registered Interior Designer is registered to practice more than one of the professions regulated by the Board and the Registered Interior Designer completes a continuing education activity that is directly related to more than one of those professions, the Registered Interior Designer may submit that activity for credit for all of the professions to which it relates. The Registered Interior Designer must maintain a separate detailed record of continuing education activities for each profession.

(4) A Registered Interior Designer may receive credit for up to 24 CEPH earned during any single registration period. A maximum of 12 CEPH that is not used to satisfy the continuing education requirements for a registration period may be carried forward to satisfy the continuing education requirements for the next registration period.

(h) Providing false information to the Board, failure to fulfill the annual continuing education program requirements, and failure to respond to, and comply with, audit and verification requests may result in disciplinary action by the Board.

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

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Cathy L. Hendricks, RID, ASID/IIDA
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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §5.154

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code. The amendments to §5.154 are proposed pursuant to §1051.208, Texas Occupations Code, which requires the board to adopt standards of conduct for its certificate holders.

No other statutes, articles or codes are affected by the proposal.

§5.154. Dishonest Practice.

(a) A Registered Interior Designer may not directly or indirectly perform an act, omit an act or allow an omission, make an assertion, or otherwise engage in a practice with the intent to:

(1) defraud;

(2) deceive; or

(3) create a misleading impression.

(b) A Registered Interior Designer may not advertise in a manner which is false, misleading, or deceptive.

(c) A Registered Interior Designer may not directly or indirectly solicit, offer, give, or receive anything or any service of significant value as an inducement or reward to secure any specific publicly funded Interior Design work. A Registered Interior Designer may not give Interior Design plans, design services, pre-bond referendum services, or any other goods or services of significant value to a governmental entity in response to a request for qualifications, a request for proposals, or otherwise during the process to select a Registered Interior Designer to render publicly funded Interior Design work. The term "significant value" is defined to mean any act, article, money, or other material consideration which is of such value or proportion that its offer or acceptance would affect the governmental entity's selection of a Registered Interior Designer or would create the appearance of an obligation or bias on the part of the governmental entity to select the Registered Interior Designer to perform the Interior Design work.

(d) For purposes of this section, a Registered Interior Designer's conduct is intentional, or with intent, if the nature of the conduct or a reasonable result of the conduct demonstrates a conscious objective or desire to engage in the conduct or cause the result. A Registered Interior Designer's intent may be established by circumstantial evidence.

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

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SUBCHAPTER K. HEARINGS--CONTESTED CASES

22 TAC §5.242

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code. The amendments to §5.242 are proposed pursuant to §1051.252(a), Texas Occupations Code, which requires the board to establish a comprehensive procedure for adjudicating complaints, including sanctions.

No other statutes, articles or codes are affected by the proposal.

§5.242. Board Responsibilities.

(a) The Board shall investigate Contested Case matters and attempt to resolve Contested Cases informally as provided in Subchapter I of this chapter (relating to Disciplinary Action) [~~of the Rules and Regulations of the Board~~]. However, if a Contested Case is not settled informally pursuant to Subchapter I of this chapter, it shall be referred to SOAH for a formal hearing to determine whether there has been a violation of any of the statutory provisions or rules enforced by the Board.

(b) A formal hearing shall be conducted in accordance with the Rules of Procedure of SOAH.

(c) After a formal hearing of a Contested Case, the SOAH administrative law judge who conducted the formal hearing shall prepare a proposal for decision and submit it to the Board so that the Board may render a final decision with regard to the Contested Case. The proposal for decision shall include findings of fact and conclusions of law.

(d) Any party of record in a Contested Case who is adversely affected by the proposal for decision may file exceptions and briefs within 20 days after the date of service of the proposal for decision. Replies to exceptions and briefs may be filed within 15 days after the date for the filing of exceptions and briefs. Exceptions, briefs, and replies shall be filed with the Board and copies shall be served on the administrative law judge and on all other parties in the same manner as for serving other documents in a Contested Case.

(e) Any party of record in a Contested Case may request an oral hearing before the Board. A request for an oral hearing shall be filed with the Board and copies shall be served on the administrative law judge and on all other parties in the same manner as for serving other documents in a Contested Case. The Board, in its sole discretion, shall determine whether to grant or deny a request for an oral hearing. If a request for an oral hearing is granted, each party of record shall be allotted 30 minutes to make an oral presentation to the Board.

(f) Upon the expiration of the time provided for the filing of exceptions and briefs or, if exceptions and briefs are filed, upon the 10th day following the time provided for the filing of replies to exceptions and briefs, the Board may render a decision to finally resolve a Contested Case. The Board may change a finding of fact or conclusion of law made by an administrative law judge or may vacate or modify an order issued by an administrative law judge only if the Board determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions;

(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

(g) If the Board makes a change to a finding of fact or conclusion of law or vacates or modifies an order pursuant to subsection (f) of this section, the Board must state in writing the specific reason and the legal basis for the change.

(h) The Board shall issue a written order regarding the Board's decision to finally resolve a Contested Case that is not settled informally. The written order shall include findings of fact and conclusions of law that are based on the official record of the Contested Case. The written order may adopt by reference the findings of fact and conclusions of law made by an administrative law judge and included in the proposal for decision submitted to the Board.

(i) Motions for rehearing and appeals may be filed and judicial review of final decisions of the Board may be sought pursuant to the Administrative Procedure Act. The party who appeals a final decision in a Contested Case shall be responsible for the cost of the preparation of the original or a certified copy of the record of the agency proceeding that is required to be sent to the reviewing court.

(j) The Board and the administrative law judge who presides over the formal hearing in a Contested Case shall refer to the following guidelines to determine the appropriate penalty for a violation of any of the statutory provisions or rules enforced by the Board:
Figure: 22 TAC §5.242(j)

(k) The penalty for a violation of any of the statutory provisions or rules enforced by the Board may vary from the penalty recommended in subsection (j) of this section if justified by the circumstances of the matter or the disciplinary history of the respondent.

(l) For any violation where revocation is recommended as an appropriate penalty for the violation, refusing to renew the respondent's certificate of registration also shall be an appropriate penalty for the violation.

(m) If the Board or the administrative law judge determines that an administrative penalty is the appropriate sanction for a violation, the guidelines described in §5.187 of this title (relating to Administrative Penalty Schedule) shall be applied to determine the amount of the administrative penalty.

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

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PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.1

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.1, Definitions.

The amendments are proposed to correct a reference to the Appraiser Qualifications Board and eliminate a redundant definition included elsewhere in state law.

Kristen Worman, 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 section. There is no anticipated significant impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendments.

Ms. Worman also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be a requirement that is easier to understand, apply and process.

Comments on the proposal may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1103.151, which authorizes the TALCB to adopt rules relating to certificates and licenses, and §1103.152, which authorizes

TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the AQB.

The statute affected by these amendments is Texas Occupations Code, Chapter 1103. No other statute, code or article is affected by the proposed amendments.

§153.1. Definitions.

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

(1) ACE--Appraiser Continuing Education.

(2) Act--The Texas Appraiser Licensing and Certification Act.

(3) Administrative Law Judge--A judge employed by the State Office of Administrative Hearings (SOAH).

(4) Analysis--The act or process of providing information, recommendations or conclusions on diversified problems in real estate other than estimating value.

(5) Applicant--A person seeking a certification, license, approval as an appraiser trainee, or registration as a temporary out-of-state appraiser from the Board.

(6) Appraisal practice--Valuation services performed by an individual acting as an appraiser, including but not limited to appraisal and appraisal review.

(7) Appraisal report--A report as defined by and prepared under the USPAP.

(8) Appraisal Standards Board--The Appraisal Standards Board (ASB) of the Appraisal Foundation, or its successor.

(9) Appraisal Subcommittee--The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council or its successor.

(10) Appraiser Qualifications Board--The Appraiser Qualifications Board (AQB) of the Appraisal Foundation, or its successor.

(11) Appraiser trainee--A person approved by the Board to perform appraisals or appraiser services under the active, personal and diligent supervision and direction of the sponsoring certified appraiser. In addition an appraiser trainee may perform appraisals or appraiser services under the active, personal and diligent supervision of an authorized supervisor as further detailed in this chapter.

(12) Board--The Texas Appraiser Licensing and Certification Board.

(13) Classroom hour--Fifty minutes of actual classroom session time.

(14) Client--Any party for whom an appraiser performs an assignment.

(15) College--Junior or community college, senior college, university, or any other postsecondary educational institution established by the Texas Legislature, which is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools or like commissions of other regional accrediting associations, or is a candidate for such accreditation.

(16) Commissioner--The commissioner of the Texas Appraiser Licensing and Certification Board.

(17) Complainant--Any person who has made a written complaint to the Board against any person subject to the jurisdiction of the Board.

(18) Complex appraisal--An appraisal in which the property to be appraised, the form of ownership, market conditions, or any combination thereof are atypical.

~~[(19) Contested case--A proceeding in which the legal rights, duties or privileges of a party are to be determined by the Board after an opportunity for adjudicative hearing. A matter that is completed without being referred to SOAH is not a contested case.]~~

(19) [~~(20)~~] Council--The Federal Financial Institutions Examination Council (FFIEC) or its successor.

(20) [~~(21)~~] Day--A calendar day unless clearly indicated otherwise.

(21) [~~(22)~~] Distance education--Any educational process based on the geographical separation of student and instructor that provides a reciprocal environment where the student has verbal or written communication with an instructor.

(22) [~~(23)~~] Feasibility analysis--A study of the cost-benefit relationship of an economic endeavor.

(23) [~~(24)~~] Federal financial institution regulatory agency--The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, or the successors of any of those agencies.

(24) [~~(25)~~] Federally related transaction--Any real estate-related transaction that requires the services of an appraiser and that is engaged in, contracted for, or regulated by a federal financial institution regulatory agency.

(25) [~~(26)~~] Foundation--The Appraisal Foundation (TAF) or its successor.

(26) [~~(27)~~] Fundamental real estate appraisal course--Those courses approved by the Appraiser Qualifications Board [~~Boards~~] as qualifying education.

(27) [~~(28)~~] Inactive certificate or license--A general certification, residential certification, or state license which has been placed on inactive status by the Board.

(28) [~~(29)~~] License--The whole or a part of any Board permit, certificate, approval, registration or similar form of permission required by law.

(29) [~~(30)~~] License holder--A person certified, licensed, approved, authorized or registered by the Board under the Texas Appraiser Licensing and Certification Act.

(30) [~~(31)~~] Licensing--Includes the Board processes respecting the granting, disapproval, denial, renewal, certification, revocation, suspension, annulment, withdrawal or amendment of a license.

(31) [~~(32)~~] Market analysis--A study of market conditions for a specific type of property.

(32) [~~(33)~~] Nonresidential real estate appraisal course--A course with emphasis on the appraisal of nonresidential real estate properties which include, but are not limited to, income capitalization, income property, commercial appraisal, rural appraisal, agricultural property appraisal, discounted cash flow analysis, subdivision analysis and valuation, or other courses specifically determined by the Board.

(33) [~~(34)~~] Nonresidential property--A property which does not conform to the definition of residential property.

(34) [~~(35)~~] Party--The Board and each person or other entity named or admitted as a party.

(35) [~~(36)~~] Person--Any individual, partnership, corporation, or other legal entity.

(36) [~~(37)~~] Personal property--Identifiable tangible objects and chattels that are considered by the general public as being "personal," for example, furnishings, artwork, antiques, gems and jewelry collectibles, machinery and equipment; all tangible property that is not classified as real estate.

(37) [~~(38)~~] Petitioner--The person or other entity seeking an advisory ruling, the person petitioning for the adoption of a rule, or the party seeking affirmative relief in a proceeding before the Board.

(38) [~~(39)~~] Pleading--A written document, submitted by a party or a person seeking to participate in a case as a party, that requests procedural or substantive relief, makes claims, alleges facts, makes a legal argument, or otherwise addresses matters involved in the case.

(39) [~~(40)~~] Real estate--An identified parcel or tract of land, including improvements, if any.

(40) [~~(41)~~] Real estate-related financial transaction--Any transaction involving: the sale, lease, purchase, investment in, or exchange of real property, including an interest in property or the financing of property; the financing of real property or an interest in real property; or the use of real property or an interest in real property as security for a loan or investment including a mortgage-backed security.

(41) [~~(42)~~] Real property--The interests, benefits, and rights inherent in the ownership of real estate.

(42) [~~(43)~~] Record--All notices, pleadings, motions and intermediate orders; questions and offers of proof; objections and rulings on them; any decision, opinion or report by the Board; and all staff memoranda submitted to or considered by the Board.

(43) [~~(44)~~] Report--Any communication, written or oral, of an appraisal, review, or analysis; the document that is transmitted to the client upon completion of an assignment.

(44) [~~(45)~~] Residential property--Property that consists of at least one but not more than four residential units.

(45) [~~(46)~~] Respondent--Any person subject to the jurisdiction of the Board, licensed or unlicensed, against whom any complaint has been made.

(46) [~~(47)~~] Sponsor or sponsoring appraiser--A certified general or residential appraiser who is designated as a supervisory appraiser, as defined by the AQB, for an appraiser trainee. The sponsor or sponsoring appraiser is responsible for providing active, personal and diligent supervision and direction of the appraiser trainee.

(47) [~~(48)~~] State certified real estate appraiser--A person certified under the Texas Appraiser Licensing and Certification Act.

(48) [~~(49)~~] State licensed real estate appraiser--A person licensed under the Texas Appraiser Licensing and Certification Act.

(49) [~~(50)~~] USPAP--Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation.

(50) [~~(51)~~] Workfile--Documentation necessary to support an appraiser's analysis, opinions, and conclusions, and in compliance with the record keeping provisions of USPAP.

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

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22 TAC §153.5

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.5, Fees.

The proposed amendments are made to reduce renewal fees for license holders.

Kristen Worman, 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 section. There is no anticipated significant impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendments.

Ms. Worman also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be a requirement that is easier to understand, apply and process.

Comments on the proposal may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1103.151, which authorizes the TALCB to adopt rules relating to certificates and licenses, and §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the AQB.

The statute affected by these amendments is Texas Occupations Code, Chapter 1103. No other statute, code or article is affected by the proposed amendments.

§153.5. Fees.

(a) The Board shall charge and the Commissioner shall collect the following fees:

(1) a fee of $400 for an application for a certified general appraiser license;

(2) a fee of $350 for an application for a certified residential appraiser license;

(3) a fee of $325 for an application for a state appraiser license;

(4) a fee of $300 for an application for an appraiser trainee license;

(5) a fee of $360 [~~$370~~] for a timely renewal of a certified general appraiser license;

(6) a fee of $310 [~~$320~~] for a timely renewal of a certified residential appraiser license;

(7) a fee of $290 [$295] for a timely renewal of a state appraiser license;

(8) a fee of $250 [$270] for a timely renewal of an appraiser trainee license;

(9) a fee equal to 1-1/2 times the timely renewal fee for the late renewal of a license within 90 days of expiration;

(10) a fee equal to two times the timely renewal fee for the late renewal of a license more than 90 days but less than six months after expiration;

(11) a fee of $250 for nonresident license;

(12) the national registry fee in the amount charged by the Appraisal Subcommittee;

(13) an application fee for licensure by reciprocity in the same amount as the fee charged for a similar license issued to a Texas resident;

(14) a fee of $40 for preparing a certificate of licensure history, active licensure, or sponsorship;

(15) a fee of $20 for an addition or termination of sponsorship of an appraiser trainee;

(16) a fee of $20 for replacing a lost or destroyed license;

(17) a fee for a returned check equal to that charged for a returned check by the Texas Real Estate Commission;

(18) a fee of $200 for an extension of time to complete required continuing education;

(19) a fee of $25 to request a license be placed on inactive status;

(20) a fee of $50 to request a return to active status;

(21) a fee of $50 for evaluation of an applicant's criminal history;

(22) an examination fee as provided in the Board's current examination administration agreement.

(23) a fee of $20 for filing any application, renewal, change request, or other record on paper when the person may otherwise file electronically by accessing the Board's website and entering the required information online; and

(24) any fee required by the Department of Information Resources for establishing and maintaining online applications.

(b) Fees must be submitted in U.S. funds payable to the order of the Texas Appraiser Licensing and Certification Board. Fees are not refundable once an application has been accepted for filing. Persons who have submitted a check which has been returned, and who have not made good on that check within thirty days, for whatever reason, shall submit all future fees in the form of a cashier's check or money order.

(c) Licensing fees are waived for members of the Board staff who must maintain a license for employment with the Board only and are not also using the license for outside employment.

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 8, 2014.

TRD-201404274
Kristen Worman
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: October 19, 2014
For further information, please call: (512) 936-3652

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CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE
SUBCHAPTER E. ALTERNATIVE DISPUTE RESOLUTION

22 TAC §157.31

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §157.31, Investigative Conference.

The amendments are proposed to clarify the information that will be provided to a respondent prior to holding an investigative conference.

Kristen Worman, 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 section. There is no anticipated significant impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendments.

Ms. Worman also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be a requirement that is easier to understand, apply and process.

Comments on the proposal may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1103.151, which authorizes the TALCB to adopt rules relating to certificates and licenses, and §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the AQB.

The statute affected by these amendments is Texas Occupations Code, Chapter 1103. No other statute, code or article is affected by the proposed amendments.

§157.31. Investigative Conference.

(a) A respondent may meet with the Board for an investigative discussion of the facts and circumstances of the alleged violations.

(b) A respondent may, but is not required to, have an attorney or other advocate present at an investigative conference.

(c) A respondent will be provided with a list of topics that may be discussed [the ~~investigative~~ ~~report~~] and a Statement of Investigative Conference Procedures and Rights (IC Form) not later than three (3) days prior to the date of the investigative conference. The respondent and respondent's attorney, if any, must acknowledge receipt of the IC

Form by signing it and delivering it to the Board at the beginning of the investigative conference.

(d) At its sole discretion, the Board may provide a copy of the investigative report to the respondent or respondent's attorney for the purpose of advancing case settlement or resolution.

(e) [~~(d)~~] Participation in an investigative conference is not mandatory and may be terminated at any time by either party.

(f) [~~(e)~~] At the conclusion of the investigative conference, the Board staff may propose a settlement offer that can include administrative penalties and any other disciplinary action authorized by the Act or recommend that the complaint be dismissed.

(g) [~~(f)~~] The respondent may accept, reject, or make a counter offer to the proposed settlement not later than ten (10) days following the date of the investigative conference.

(h) [~~(g)~~] If the parties cannot reach a settlement not later than ten (10) days following the date of the investigative conference, the matter will be referred to the Director of Standards and Enforcement Services to pursue appropriate action.

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

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CHAPTER 159. RULES RELATING TO THE PROVISIONS OF THE TEXAS APPRAISAL MANAGEMENT COMPANY REGISTRATION AND REGULATION ACT

22 TAC §§159.1, 159.3, 159.4, 159.52, 159.101 - 159.105, 159.107 - 159.109, 159.154 - 159.157, 159.159, 159.161, 159.162, 159.201, 159.204

Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to §159.1, Definitions; §159.3, Appraisal Management Company Advisory Committee; §159.4, Jurisdiction and Exemptions; §159.52, Fees; §159.101, Registration Requirements; §159.102, Eligibility for Registration; Ownership; §159.103, Applications; §159.104, Primary Contact; Appraiser Contact; §159.105, Denial of Registration; §159.107, Expiration; §159.108, Renewal; §159.109, Inactive Status; §159.154, Competency of Appraisers; §159.155, Periodic Review of Appraisals; §159.156, Business Records; §159.157, Compensation of Appraisers; §159.159, Disclosure of Registered Name and Registration Number; §159.161, Appraiser Panel; §159.162, Dispute Resolution; §159.201, Guidelines for Revocation, Suspension, or Denial of a Registration; and §159.204, Complaint Processing.

The proposed amendments are made following a comprehensive rule review for this chapter to better reflect current TALCB procedures and to simplify and clarify where needed.

The proposed amendments capitalize the term "Board" and replace the term "licensee" with "license holder" throughout the chapter. The proposed amendments also remove redundant or unused provisions and restructure certain rules to improve readability. Other specific amendments are as follows:

The proposed amendments to §159.109 allow an AMC to renew its license while the license is on inactive status.

The proposed amendments to §159.155 reduce the percentage of reviews that an Appraisal Management Company (AMC) must perform from five to two percent.

Kristen Worman, 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 anticipated significant impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendments.

Ms. Worman 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 a requirement that is easier to understand, apply and process.

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1104.051, which authorizes the TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Texas Occupations Code, Chapter 1104. No other statute, code or article is affected by the proposed amendments.

§159.1. Definitions.

(a) AMC--Appraisal management company.

(b) AMC Act--Chapter 1104, Texas Occupations Code, Texas Appraisal Management Company Registration and Regulation Act.

(c) [~~(b)~~] Administrative law judge--A judge employed by the State Office of Administrative Hearings (SOAH).

(d) [~~(c)~~] Advertising--a written or oral statement or communication by or on behalf of an AMC [~~appraisal management company~~] that induces or attempts to induce a member of the public to use the services of the AMC, including but not limited to all publications, radio or television broadcasts, all electronic media including email, text messages, social networking websites, and the Internet, business stationery, business cards, signs and billboards.

(e) [~~(d)~~] Applicant--A person seeking to become registered under the AMC Act [~~Chapter 1104 of the Texas Occupations Code~~].

(f) [~~(e)~~] Appraisal firm--An entity that employs appraisers on an exclusive basis and receives compensation for performing appraisals and issuing appraisal reports in its own name.

(g) [~~(f)~~] Appraiser contact--A person designated by an AMC pursuant to §1104.103(b)(6) of the AMC [~~Texas Appraisal Management Company Registration and Regulation~~] Act to respond to and communicate with appraisers on the AMC's [~~company's~~] appraisal panel regarding appraisal assignments.

(h) Board--The Texas Appraiser Licensing and Certification Board.

(i) [~~(g)~~] Commissioner--The Commissioner of the [~~Texas Appraiser Licensing and Certification~~] Board.

~~[(h) Contested case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the Board after an opportunity for an adjudicative hearing. A matter that is completed without being referred to SOAH is not a contested case.]~~

(j) [~~(i)~~] Day--A calendar day unless clearly indicated otherwise.

(k) License--The whole or a part of any Board permit, certificate, approval, registration or similar form of permission required by Chapter 1103 or 1104, Texas Occupations Code.

(l) License holder--A person licensed or registered by the Board under the AMC Act.

(m) [~~(j)~~] Party--The Board and each person named or admitted as a party.

(n) [~~(k)~~] Person--Any individual, partnership, corporation, or legal entity.

~~[(l) Pleading--A written document, submitted by a party or a person seeking to participate in a case as a party, that requests procedural or substantive relief, alleges facts, makes a legal argument, or otherwise addresses matters involved in the case.]~~

(o) [~~(m)~~] Primary contact--A person who meets the definition of "controlling person" in §1104.003 of the AMC [~~the Texas Appraisal Management Company Registration and Regulation~~] Act and is designated by an AMC pursuant to §1104.104 of the AMC Act as the primary contact for all communication between the Board [~~board~~] and the AMC [~~company~~].

~~[(n) Registrant--A person registered as an appraisal management company by the Board under the Texas Appraisal Management Company Registration and Regulation Act.]~~

(p) [~~(o)~~] Respondent--Any person subject to the jurisdiction of the Board, registered or unregistered, against whom any complaint has been made.

~~[(p) Rule--Any Board statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the Board and is filed with the Texas Register.]~~

(q) SOAH--State Office of Administrative Hearings.

(r) USPAP--Uniform Standards of Professional Appraisal Practice.

§159.3. Appraisal Management Company Advisory Committee.

(a) A quorum of the committee consists of two members.

(b) The committee may meet at the call of the chair or upon the request of a majority of its members. The committee shall meet at the request of the Board.

(c) Unless state law or Board rules require otherwise, meetings [~~Meetings~~] shall be conducted in accordance with [~~the Texas Open Meetings Act and~~] Robert's Rules of Order.

(d) At the end of a term, members shall continue to serve until their successors are qualified.

§159.4. Jurisdiction and Exemptions.

(a) This chapter does not apply to appraisal management services provided:

(1) for the appraisal of:

(A) commercial property; or

(B) residential properties of more than four units; or

(2) by persons exempted under §1104.004, the AMC Act [~~Texas Occupations Code~~].

(b) For the purposes of §1104.004 of the AMC Act[~~, Texas Occupations Code~~]:

(1) a person exclusively employs appraisers on an employer and employee basis for the performance of appraisals if the person does not also employ appraisers as independent contractors or under any other arrangement;

(2) a person employs not more than 15 appraisers on an exclusive basis as independent contractors for the performance of appraisals if:

(A) the person prohibits the independent contractors from performing appraisals for others; and

(B) the person does not employ more than 15 appraisers as independent contractors at any time;

(3) a subsidiary of a financial institution is not a department or unit within the institution;

(4) an AMC [~~appraisal management company~~] that requires an employee of the AMC [~~appraisal management company~~] who is an appraiser who provided no significant real property appraisal assistance to sign an appraisal that is completed by another appraiser who contracts with the AMC [~~appraisal management company in order to avoid the requirements of Chapter 1104, Texas Occupations Code~~], is not exempt from the registration requirement or other requirements of the AMC Act [~~chapter~~]; and

(5) an AMC [~~appraisal management company~~] has an appraisal panel of not more than 15 appraisers at all times during a calendar year if:

(A) the AMC [~~it~~] does not have more than 15 appraisers on its panel at any time; and[~~.~~]

(B) an appraiser who has been removed from the AMC's panel is not added back to the panel within 12 months after the date of removal.

(c) A person may solicit prospective panelists in anticipation of acting as an AMC [~~appraisal management company~~] without being registered as an AMC, provided that it is registered prior to forming a panel, accepting an appraisal assignment, or performing any other act constituting an appraisal management service.

(d) For the purposes of the AMC Act, a property is located in Texas if it is located wholly or partly in the state.

§159.52. Fees.

(a) The Board will [~~shall~~] charge and the Commissioner will [~~shall~~] collect the following fees:

(1) a fee of $3,300 for an application for a two-year registration;

(2) a fee of $3,300 for a timely renewal of a two-year registration;

(3) a fee equal to 1-1/2 times the timely renewal fee for the late renewal of a registration within 90 days of expiration; a fee equal to two times the timely renewal fee for the late renewal of a registration more than 90 days but less than six months after expiration;

(4) the national registry fee in the amount charged by the Appraisal Subcommittee for the AMC [~~appraisal management company~~] registry;

(5) a fee of $10 for each appraiser on a panel at the time of renewal of a registration;

(6) a fee of $10 to add an appraiser to a panel in the Board's records;

(7) a fee of $10 for the termination of an appraiser from a panel;

(8) a fee of $25 to request a registration be placed on inactive status;

(9) a fee of $50 to return to active status;

(10) a fee of $40 for preparing a certificate of licensure history or active licensure;

(11) a fee for a returned check equal to that charged for a returned check by the Texas Real Estate Commission;

(12) a fee of $20 for filing any request to change an owner, primary contact, appraiser contact, registered business name or place of business;

(13) a fee of $50 for evaluation of an owner or primary contact's background history not submitted with an original application or renewal;

(14) a fee of $20 for filing any application, renewal, change request, or other record on paper when the person may otherwise file electronically by accessing the Board's website and entering the required information online; and

(15) any fee required by the Department of Information Resources for establishing and maintaining online applications.

(b) Fees must be submitted in U.S. funds payable to the order of the Texas Appraiser Licensing and Certification Board. Fees are not refundable once an application has been accepted for filing. Persons who have submitted a check which has been returned, and who have not made good on that check within 30 days, for whatever reason, must [~~shall~~] submit all future fees in the form of a cashier's check or money order.

(c) AMCs registered with the Board must [~~shall~~] pay any annual registry fee as required under federal law. All registry fees collected by the Board will [~~shall~~] be deposited in the Texas Treasury Safekeeping Trust Company to the credit of the appraiser registry fund. The Board will [~~shall~~] send the fees to the Appraisal Subcommittee as required by federal law.

§159.101. Use of Business Name [~~Registration Requirements~~].

A license holder must [~~registrant shall~~] notify the Board, on a form approved by the Board [~~for the purpose~~], within 30 days after the license holder [~~registrant~~] starts or stops using a business name [~~in business~~] other than the name in which the license holder [~~it~~] is registered.

§159.102. Eligibility for Registration; Ownership.

For the purpose of certifying to the Board that an applicant has reviewed the owners of the entity as required by the AMC Act and that no such owner has had a license [~~or certificate~~] to act as an appraiser denied, revoked, or surrendered in lieu of revocation unless the license [~~or certification~~] was subsequently granted or reinstated, the applicant may rely on the Appraisal Subcommittee's online National Registry [~~license/certification~~] database.

§159.103. Applications.

(a) An application must be accompanied by one completed and signed Owner/Primary Contact Background History form for the primary contact and each owner of more than 10% of the company.

(b) An application may be rejected if incomplete.

(c) An application may be considered void and subject to no further evaluation or processing if an applicant fails to provide information or documentation within 60 days after the Board makes written request for the information or documentation.

(d) License holders must [~~Registrants shall~~] retain documents establishing ownership for a period of five years from the date the application was filed.

§159.104. Primary Contact; Appraiser Contact.

(a) A license holder must [~~registrant shall~~] give the Board written notice of any change to the contact information for its primary contact or appraiser contact within 15 days of the change.

(b) If a license holder's [~~registrant's~~] primary contact or appraiser contact changes, the license holder must [~~registrant shall~~] give the Board written notice of the change, including all information required by §1104.103(b)(4) and [~~or~~] (6)[~~,~~] of the AMC Act [~~Texas Occupations Code~~], and, if appropriate, documentation that the person is qualified to serve under §1104.104(b) of the AMC Act[~~, Texas Occupations Code~~], within 15 days of the change.

(c) A license holder must [~~registrant shall~~] give the Board written notice within 15 days if its primary contact or appraiser contact ceases to serve in that role and a qualified replacement is not immediately named. If a license holder's [~~registrant's~~] primary contact or appraiser contact ceases to [~~be~~] serve in that role and the license holder [~~registrant~~] does not give the Board written notice of a replacement, the license holder will [~~registrant shall~~] be placed on inactive status.

(d) A primary contact who assumes that role during the term of the registration must [~~shall~~] provide the Board written consent to a criminal history background check, as required by §1104.102 of the AMC Act[~~, Texas Occupations Code~~]. If the person does not satisfy the Board's moral character requirements, the Board will [~~shall~~] remove the person from its records and the license holder [~~registrant~~] will be placed on inactive status. Such a decision by the Board [~~staff~~] may be reviewed and reconsidered by the Commissioner if the license holder [~~registrant~~] submits a written request for reconsideration within ten days of notice that the person does not qualify to serve as primary contact. The license holder [~~registrant~~] will remain on inactive status while the request for reconsideration is pending.

(e) The appraiser contact must hold an active, current license [~~or certification~~] issued by an appraiser regulatory agency within the jurisdiction of the Appraisal Subcommittee.

§159.105. Denial of Registration.

(a) AMCs [~~Appraisal management companies~~], persons who own more than 10% of an AMC, and individuals who act as the primary contact for an AMC must be honest, trustworthy, and reliable. Accordingly, such persons must satisfy the Board of their honesty, integrity, and trustworthiness before a registration may be issued or renewed.

(b) The board deems the following felonies and misdemeanors directly related to the field of appraisal management and suggestive of a lack of the requisite moral character:

(1) offenses involving fraud or misrepresentation;

(2) offenses against real or personal property belonging to another, if committed knowingly or intentionally;

(3) offenses against public administration;

(4) offenses involving the sale or other disposition of real or personal property belonging to another without authorization of law;

(5) offenses involving moral turpitude; and

(6) offenses of attempting or conspiring to commit any of the foregoing offenses.

(c) In determining whether a criminal offense by an applicant, the primary contact, or an owner of more than 10% of the AMC prevents the issuance of a registration, the Board will [~~shall~~] consider the following factors:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a registration to provide appraisal management services;

(3) the extent to which a registration might offer an opportunity to engage in further criminal activity of the same type as that which the person had previously been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to be involved, directly or indirectly, in performing the duties and discharge the responsibilities of AMC [~~appraisal management company~~].

(d) In determining the present fitness of a person who has committed an offense under this section, the Board will [~~board shall~~] consider the following evidence:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person at the time of the commission of the crime;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the person's present fitness including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the person.

(e) A person is presumed to lack the requisite moral character if less than two years has elapsed since the offense was committed.

(f) An applicant is presumed to be unfit to perform appraisal management services if the person has violated the appraiser independence standards of Section 129E of the Truth in Lending Act (15 U.S.C. §1601 et seq.). This presumption may be rebutted [~~ebutted~~] by credible evidence to the contrary.

(g) It is [~~shall be~~] the responsibility of the applicant to the extent possible to secure and provide the Board [~~board~~] the recommendations of the prosecution, law enforcement, and correctional authorities, as well as evidence, in the form required by the Board [~~board~~], relating to whether the applicant has maintained a record of steady employment, has maintained a record of good conduct, and is current on the payment of any outstanding court costs, supervision fees, fines, and restitution.

(h) A currently incarcerated individual does not possess the required good moral character.

(i) The primary contact and each owner of more than 10% of the AMC [~~appraisal management company~~] must consent in writing to a criminal history background check at the time the company submits an application.

(j) An application for renewal that is proposed to be denied by Standards and Enforcement Services Division staff may be reviewed and reconsidered by the Commissioner if the applicant submits a written request for reconsideration within ten days of notice of the proposed denial. The right to request reconsideration is distinct from, and in addition to, an applicant's right to appeal a proposed denial before SOAH [~~the State Office of Administrative Hearings~~].

§159.107. Expiration.

A registration is valid for the term for which it is issued by the Board [~~unless suspended or revoked for cause~~].

§159.108. Renewal.

(a) The Board will [~~shall~~] send a renewal notice to the license holder's [~~registrant's~~] primary contact at least 180 days prior to the expiration of the license [~~registration~~].

(b) To renew a license, a license holder must:

(1) submit an application as required by §1104.103 of the AMC Act; and

(2) pay all applicable renewal fees established in §159.52 of this chapter.

(c) [~~(b)~~] It is the responsibility of the license holder [~~Registrant~~] to apply for renewal in accordance with [~~Chapter 1104, Texas Occupations Code, and~~] this section [~~chapter~~] sufficiently in advance of the expiration date to ensure that all renewal requirements, including background checks, are satisfied before the expiration date of the license [~~registration~~].

(d) Failure to receive a renewal notice from the Board [~~board~~] does not relieve the license holder [~~registrant~~] of the responsibility to timely apply for renewal.

(e) [~~(c)~~] An application for renewal is not complete, and no renewal will issue, until all application requirements are satisfied.

§159.109. Inactive Status.

(a) To elect to be placed on inactive status, a license holder [~~registrant~~] must do the following:

(1) file a request for inactive status on a form approved by the Board and pay the required fee; and

(2) confirm in writing to the Board that the license holder [~~registrant~~] has given written notice of its election to go inactive to all appraisers listed on the license holder's [~~registrant's~~] appraiser panel at least 30 days prior to filing the request for inactive status.

(b) In order to return from inactive status to active status, a license holder must [~~registrant shall~~] submit to the Board a completed Request for Active Status form and proof of compliance with all outstanding requirements for active registration.

(c) A license holder [~~registrant~~] that has elected or been placed on inactive status may not engage in any activity for which registration is required until an active registration has been issued by the Board.

(d) The appraiser panel of a license holder [~~registrant~~] on inactive status will remain in place [~~until the registrant's next renewal date~~].

(e) A license holder [~~registrant~~] may [~~not~~] renew on inactive status. To renew on inactive status, a license holder [~~An inactive registrant~~] must satisfy:

(1) all requirements under subsection (a) of this section; and

(2) all renewal requirements for an active registration under §159.108 of this chapter.

§159.154. Competency of Appraisers.

(a) In addition to verifying an appraiser's licensure [~~or certification~~] as required by §1104.152 of the AMC Act, an AMC must, at the time of or before making an assignment to an appraiser, obtain a written certification from the appraiser that the appraiser:

(1) is competent in the property type of the assignment;

(2) is competent in the geographical area of the assignment;

(3) has access to appropriate data sources for the assignment;

(4) will immediately notify the AMC if the appraiser later determines that he or she is not qualified under paragraph (1), (2), or (3) of this subsection to complete the assignment; and

(5) is aware that misrepresentation of competency is subject to the mandatory reporting requirement in §1104.160 of the AMC Act.

(b) An AMC that has reviewed an appraiser's work must [~~shall~~] consider the findings of the review in verifying competency for the purpose of assigning future work.

(c) For the purposes of verifying that an appraiser has not had a license [~~or certification as an appraiser~~] denied in another jurisdiction, an AMC may rely on information provided by the appraiser.

§159.155. Periodic Review of Appraisals.

(a) A license holder must [~~registrant shall~~] review the work of appraisers performing appraisal services on 1-4 family unit properties collateralizing mortgage obligations by performing a review in accordance with Standard 3 of USPAP [~~the Uniform Standards of Professional Appraisal Practice (USPAP)~~] of:

(1) one of the first five appraisals performed for the license holder [~~registrant~~] by each appraiser, prior to making a sixth assignment; and

(2) a total of two [~~five~~] percent, randomly selected, of the appraisals performed for the AMC for each twelve-month period following the date of the AMC's registration.

(b) Appraisals performed pursuant to subsection (a)(1) of this section will [~~shall~~] be counted toward the calculation of five percent for the purposes of subsection (a)(2) of this section.

(c) A review pursuant to subsection (a)(1) of this section is not required if the first five appraisals by an appraiser were completed before the AMC was required by the AMC Act [~~Chapter 1104 of the Texas Occupations Code~~], to be registered with the Board.

(d) In addition to satisfying the requirements of §1104.153 of the AMC Act, the review appraiser must have access to appropriate data sources for the appraisal being reviewed.

(e) A certified residential appraiser may perform a review of a residential real estate appraisal completed by a certified general appraiser if the review appraiser is otherwise permitted by the Texas Appraiser Licensing and Certification Act to perform the assignment.

(f) An appraiser conducting a review under §1104.155 of the AMC Act and this rule must ensure compliance with the USPAP and with §1104.154 of the AMC Act.

(g) In order to satisfy the requirements of §1104.155 of the AMC Act, this rule and USPAP, a license holder [~~registrant~~] performing a review must adhere to the following minimum scope of work:

(1) research and consult the appropriate data sources for the appraisal being reviewed to, at a minimum, validate the significant characteristics of the comparables and the essential elements of the transactions including:

(A) the multiple listing service(s) or other recognized methods, techniques and data sources for the geographic area in which the appraisal under review was performed, if the appraisal under review included a sales comparison approach;

(B) published cost data sources and other recognized methods, techniques and data sources for the geographic area in which the appraisal under review was performed, if the appraisal under review included a cost approach;

(C) the comparable rental data, income and expense data, and other recognized methods, techniques and data sources for the geographic area in which the appraisal under review was performed, if the appraisal under review included an income approach; and

(D) the sales or listing history of the property which is the subject of the appraisal under review, if that property was sold within the three years prior to the effective date of the appraisal under review or listed for sale as of the effective date of the appraisal under review[~~, the scope of review must include research and consultation of that~~];

(2) state the reviewer's opinions and conclusions about the work under review for each of the approaches to value utilized in the appraisal under review, including the reason for any disagreements;

(3) identify if the appraisal under review omitted an approach to value, a particular piece of information, or an analysis of either that was necessary for credible assignment results, identify what was omitted and explain why it was necessary for credible assignment results;

(4) identify the client, any intended users and the effective date of the appraisal review;

(5) state that the appraisal review's intended use and purpose is to satisfy the requirements of §1104.155 of the AMC Act and this rule, including ensuring that the appraisal under review complies with the [~~edition of~~] USPAP edition in effect at the time of the appraisal;

(6) state that the scope of work for the appraisal review is commensurate with the requirements of §1104.155 of the AMC Act, this rule and USPAP edition in effect at the time of the appraisal review and that the scope of work ensures the development of credible assignment results and that no assignment conditions impose limitations which make the results of the review not credible;

(7) identify the appraisal under review, including:

(A) any ownership interest of the appraiser or reviewer in the property that is the subject of the appraisal under review;

(B) the report date and effective date of the appraisal under review;

(C) the effective date of the opinions or conclusions in the appraisal under review;

(D) the physical, legal, and economic characteristics of the property, properties, property type(s), or market area in the appraisal under review; and

(E) the name of all appraisers who signed or provided significant professional assistance in the appraisal under review;

(8) state clearly and conspicuously, all extraordinary assumptions and hypothetical conditions and state that their use might have affected the review; and

(9) contain a certification which complies with USPAP Standards Rule 3-6.

(h) While not required by §1104.155 of the AMC Act or this rule, if the reviewer elects to develop an opinion of value, review opinion, or real property appraisal consulting conclusion, the review must comply with the additional provisions of USPAP governing the development of an opinion of value, review opinion, or real property appraisal consulting conclusion.

§159.156. Business Records.

(a) For the purposes of the requirement in §1104.156(c) of the AMC Act regarding retention of written records of substantive communications between an AMC and an appraiser, a communication is substantive if it relates to the appraiser's qualifications or to the scope of work of an assignment.

(b) An AMC may not require an appraiser to keep confidential the existence of the appraiser's business relationship with an AMC or the fact that the appraiser has received any specific assignment from the AMC to perform an appraisal [~~confidential~~].

(c) A business entity registered as an AMC must maintain documentation showing that it has complied with the requirements contained in its governing documents for changing officers or managers. The business entity must promptly provide to the Board [~~TALCB~~] upon request all business formation, ownership and representative authorization records and changes thereto required to be kept by the business entity by law.

(d) Written records include electronic records.

§159.157. Compensation of Appraisers.

(a) A license holder must [~~registrant shall~~] compensate the appraisers on the panel based on a compensation policy, established by the license holder [~~registrant~~], that provides for customary and reasonable fees by taking into consideration the requirements of and any presumptions available under federal law.

(b) A license holder must [~~registrant shall~~] reassess its compensation policy at least annually and shall retain, for a period of five years, records of all compensation information that formed the basis for the policy.

(c) A license holder must [~~registrant shall~~] make any fee schedule adopted under its compensation policy available to each appraiser on its panel [~~any fee schedule adopted under its compensation policy~~].

(d) A license holder may [~~registrant shall~~] not require an appraiser to sign a certification that a fee for an assignment is customary and reasonable.

§159.159. Disclosure of Registered Name and Registration Number.

(a) For the purposes of the AMC Act, "documents used to procure appraisals" include written documents and electronic communications, including e-mail, used for that purpose, but does not include general advertisements and supporting documentation.

(b) On all documents used to procure appraisals, an AMC must disclose the name it registered with the Board, any other name that it uses in business and the registration number received from the Board.

§159.161. Appraiser Panel.

(a) If an appraiser is not employed by the AMC or already a member of the AMC's panel, an AMC must add the appraiser to the AMC's panel no later than the date on which the AMC makes an assignment to the appraiser. [~~An appraisal management company may not make an assignment to an appraiser who is not a member of the AMC's panel at the time of the assignment unless the appraiser is employed by the AMC on an employer-employee basis.~~]

(b) To add an appraiser to a panel, the AMC must [~~shall~~]:

(1) initiate the appropriate two-party transaction[~~, if available,~~] through the [~~Texas Appraiser Licensing and Certification~~] Board's online panel [~~license~~] management system, including payment of any required fee(s); or

(2) submit a notice on a form approved by the Board for this purpose, including the signatures of the appraiser and the AMC's primary contact, and the appropriate fee(s).

(c) An appraiser or an AMC may terminate the appraiser's membership on a panel [~~Either the appraiser or the AMC may terminate an appraiser's membership on a panel~~] by:

(1) submitting a termination notice electronically[~~, if available,~~] through the [~~Texas Appraiser Licensing and Certification~~] Board's online panel [~~license~~] management system, including payment of any required fee; or

(2) submitting a notice on a form approved by the Board for this purpose and the appropriate fee(s).

(d) If an appraiser terminates his or her membership on a panel, the appraiser must [~~he or she shall~~] immediately notify the AMC of the termination. If an AMC terminates an appraiser's membership on a panel, the AMC must [~~it shall~~] immediately notify the appraiser of the termination.

(e) If an appraiser's license [~~or certification~~] expires or is revoked, the Board will [~~shall~~] remove the appraiser from any panels on which the appraiser [~~he or she~~] is listed with no fee charged to the AMC or to the appraiser.

§159.162. Dispute Resolution.

(a) A license holder must provide a dispute resolution process for appraisers. [~~A registrant's dispute resolution process for appraisers shall provide for:~~]

[~~(1) a written response to the request for review;~~]

[~~(2) a written statement of the outcome of the dispute resolution process; and~~]

[~~(3) copies of all relevant documentation to the appraiser upon written request.~~]

(b) The dispute resolution process must [~~shall~~] provide for either:

(1) review by an external third party; or

(2) internal review by a person whose position within the company is above the level of the person responsible for the decision or action under review.

(c) A license holder's dispute resolution process for appraisers must provide for:

(1) a written response to the request for review;

(2) a written statement of the outcome of the dispute resolution process; and

(3) copies of all relevant documentation to the appraiser upon written request.

(d) An appraiser who is aggrieved under §1104.157 or §1104.161 of the AMC Act must utilize the license holder's dispute resolution process before filling a complaint against the AMC with the Board.

§159.201. Guidelines for Revocation, Suspension, or Denial of a License [~~Registration~~].

(a) The Board may suspend or revoke a license [~~registration~~] issued under provisions of the AMC [~~this~~] Act, or deny issuing a license [~~registration~~] to an applicant, [~~at~~] any time [~~when~~] it is [~~has been~~] determined that the person applying for or holding the license or the AMC's primary contact [~~registration~~]:

(1) disregards or violates a provision of the AMC Act or Board rules [~~of the Rules of the Texas Appraiser Licensing and Certification Board~~];

(2) is convicted of a felony;

(3) fails to notify the Board not later than the 30th day after the date of the final conviction if the person, in a court of this or another state or in a federal court, has been convicted of or entered a plea of guilty or nolo contendere to a felony or a criminal offense involving fraud or moral turpitude;

(4) fails to notify the Board not later than the 30th day after the date of incarceration if the person, in this or another state, has been incarcerated for a criminal offense involving fraud or moral turpitude;

(5) fails to notify the Board not later than the 30th day after the date disciplinary action becomes final against the person with regard to any occupational license the person holds in Texas or any other jurisdiction;

(6) fails to comply with the USPAP edition [~~Uniform Standards of Professional Appraisal Practice (USPAP)~~] in effect at the time of the appraisal or appraisal practice;

(7) acts or holds [~~himself or herself or~~] any [~~other~~] person out as a registered AMC [~~appraisal management company~~] under the AMC Act or another state's act when not so licensed or certified;

(8) accepts payment for appraisal management services but fails to deliver the agreed service in the agreed upon manner;

(9) refuses to refund payment received for appraisal management services when he or she has failed to deliver the appraiser service in the agreed upon manner;

(10) accepts payment for services contingent upon a minimum, maximum, or pre-agreed value estimate;

(11) offers to perform appraisal management services or agrees to perform such services when employment to perform such services is contingent upon a minimum, maximum, or pre-agreed value estimate;

(12) makes a material misrepresentation or omission of material fact;

(13) has had a registration as an AMC [~~appraisal management company~~] revoked, suspended, or otherwise acted against by any other jurisdiction for an act which is an offense under Texas law;

(14) procures a registration pursuant to the AMC Act by making false, misleading, or fraudulent representation;

(15) has had a final civil judgment entered against him or her on any one of the following grounds:

(A) fraud;

(B) intentional or knowing misrepresentation; or

(C) grossly negligent misrepresentation in the making of real estate appraiser services;

(16) fails to make good on a payment issued to the Board within 30 days after the Board has mailed a request for payment by certified mail to the license holder's [~~registrant's~~] primary contact as reflected in [~~by~~] the Board's records;

(17) knowingly or willfully engages in false or misleading conduct or advertising with respect to client solicitation;

[~~(18) acts or holds himself or any other person out as a registered appraisal management company under this or another state's Act when not so licensed or certified;~~]

(18) [~~(19)~~] uses any title, designation, initial or other insignia or identification that would mislead the public as to that person's credentials, qualifications, competency, or ability to provide appraisal management services;

(19) [~~(20)~~] fails to comply with a final order of the Board; or

(20) [~~(21)~~] fails to answer all inquiries concerning matters under the jurisdiction of the Board within 20 days of notice to said person's or primary contact's [~~individual's~~] address of record, or within the time period allowed if granted a written extension by the Board.

(b) The Board has discretion in determining the appropriate penalty for any violation under subsection (a) of this section.

(c) The Board may probate a penalty or sanction, and may impose conditions of the probation, including, but not limited to:

(1) the type and scope of appraisal management practice;

(2) requirements for additional education by the AMC's [~~appraisal management company's~~] controlling persons;

(3) monetary administrative penalties; and

(4) requirements for reporting appraisal management activity to the Board.

(d) A person applying for reinstatement after revocation or surrender of a registration must comply with all requirements that would apply if the registration [~~license or certification~~] had instead expired.

(e) The provisions of this section do not relieve a person from civil liability or from criminal prosecution under the AMC Act or under the laws of this State.

(f) The Board may not investigate under this section a complaint submitted either more than two years after the date of discovery or more than two years after the completion of any litigation involving the incident, whichever event occurs later, involving the AMC [~~appraisal management company~~] that is the subject of the complaint.

(g) Except as provided by Texas Government Code §402.031(b) and Texas Penal Code §32.32(d), there will [~~shall~~] be no undercover or covert investigations conducted by authority of the AMC Act.

[~~(h) All Board members, officers, directors, and employees of this agency shall be held harmless with respect to any disclosures made to the Board in connection with any complaints filed with the Board.~~]

§159.204. Complaint Processing.

(a) A complaint must be in writing on a form prescribed by the Board and must be signed by the complainant. Board staff may initiate a complaint.

[~~(1)~~] Upon receipt of a complaint, staff will [~~shall~~]:

(1) [~~(A)~~] assign the complaint a case number in the complaint tracking system; and

(2) [~~(B)~~] send written acknowledgement of receipt to the complainant.

(b) [~~(2)~~] If the staff determines at any time that the complaint is not within the Board's jurisdiction, or that no violation exists, the complaint will [~~shall then~~] be dismissed with no further processing. The Board or the Commissioner may delegate to [~~Board~~] staff the duty to dismiss complaints.

(c) [~~(3)~~] A complaint alleging mortgage fraud or in which mortgage fraud is suspected:

(1) [~~(A)~~] may be investigated covertly; and

(2) [~~(B)~~] will [~~shall~~] be referred to the appropriate prosecutorial authorities.

(d) [~~(4)~~] Staff may request additional information necessary to determine how to proceed with the complaint.

(e) [~~(5)~~] A copy of the complaint and all supporting documentation will [~~shall~~] be sent to the Respondent [~~respondent~~] unless the complaint qualifies for covert investigation and the Standards and Enforcement Services Division deems covert investigation appropriate.

(f) [~~(6)~~] The Respondent must [~~respondent shall~~] submit a response within 20 days of receiving a copy of the complaint. The 20-day period may be extended for good cause upon request in writing or by e-mail.

(1) [~~(A)~~] The response must [~~shall~~] include the following:

(A) [~~(i)~~] a narrative response to the complaint, addressing each and every element thereof;

(B) [~~(ii)~~] a copy of all requested records and any other relevant records;

(C) [~~(iii)~~] a list of any and all persons known to the respondent to have actual knowledge of any of the matters made the subject of the complaint and, if in the Repondent's [~~respondent's~~] possession, contact information for such persons; and

(D) [~~(iv)~~] the following statement in the letter transmitting the response: EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE COPIES OF RECORDS ACCOMPANYING THIS RESPONSE ARE TRUE AND CORRECT COPIES OF THE ACTUAL RECORDS.

(2) [~~(B)~~] The Respondent [~~respondent~~] may also address other matters not raised in the complaint that the Respondent [~~respondent~~] believes likely to be raised.

(g) [~~(7)~~] The complaint will [~~shall~~] be assigned to a staff investigator and will [~~shall~~] be investigated by the staff investigator or peer investigative committee, as appropriate.

(h) [~~(8)~~] The staff investigator or peer investigative committee assigned to investigate a complaint will [~~shall~~] prepare a report detailing its findings on a form approved by the Board for that purpose. [~~Reports prepared by a peer investigative committee shall be reviewed by the Standards and Enforcement Services Division, which shall determine the appropriate disposition of the complaint.~~]

(i) Staff will evaluate the complaint, the Respondent's response, if any, and the investigative report to determine if there is probable cause to believe a violation of the AMC Act or Board rules occurred:

(1) If staff concludes there is no probable cause to believe that a violation of the AMC Act or Board rules occurred, the complaint will be dismissed with no further processing;

(2) If staff concludes there is probable cause to believe that a violation of the AMC Act or Board rules occurred, staff may recommend that the Board enter into an agreed order with the Respondent or, if an agreed resolution cannot be reached, proceed as the complainant in a contested case hearing under Chapter 2001, Government Code.

(j) [~~(9)~~] Agreed orders [~~resolutions of complaint matters~~] must be signed by the Respondent [~~respondent~~], a representative of the Standards and Enforcement Services Division, and the Commissioner.

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 8, 2014.

TRD-201404276
Kristen Worman
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: October 19, 2014
For further information, please call: (512) 936-3652

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PART 11. TEXAS BOARD OF NURSING

CHAPTER 216. CONTINUING COMPETENCY

22 TAC §§216.1, 216.5, 216.6

The Texas Board of Nursing (Board) proposes amendments to 22 TAC Chapter 216, §§216.1, 216.5, and 216.6, concerning Definitions, Additional Criteria for Specific Continuing Education Programs, and Activities that are not Acceptable as Continuing Education. The amendments are proposed under the authority of the Texas Occupations Code, §§301.151, 301.152, 301.303 - 301.307 and are necessary to effectuate the provisions of SB 1058 and SB 1191 enacted during the 83rd Legislative Session. The amendments to the chapter will also allow an individual to receive continuing education credit for authoring an article published in a nursing periodical or developing and presenting a CNE program that would qualify for credit under the Board rules provided it is at least two hours in length.

Section by Section Overview.

Proposed amended §216.1(6) adds a phrase to the definition "authorship" to further clarify that publication refers to manuscripts published in a nursing or health-related textbook or journal.

Proposed amended §216.1(16) adds a new term "program development and presentation" and renumbers the section accordingly.

Proposed amended §216.5 adds a new subsection that allows individuals to receive continuing education (CE) credit for the development and presentation of a program that is approved by

one of the credentialing agencies or providers approved by the Board and for the development and publication of a manuscript related to nursing and health care. Proposed amended §216.5 also adds provisions relating to auditing an individual who claims these credits.

Proposed amended §216.6 removes reference to "authorship" from the list of activities that are not acceptable as continuing education.

Fiscal Note.

Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments are effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal.

Public Benefit/Cost Note.

Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of updated requirements that are consistent with the provisions of the NPA.

Potential Costs of Compliance.

The Board does not anticipate any associated costs of compliance with the proposed amendments, as the proposal does not include any substantive changes that would impose new costs of compliance on any person subject to the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses.

As required by Government Code §2006.002(c) and (f), the Board has determined that the proposal will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person who is required to comply with the proposal.

Takings Impact Assessment.

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

Request for Public Comment.

To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on October 19, 2014, by mail to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701; by e-mail to dusty.johnston@bon.texas.gov; or faxed to (512) 305-8101. An additional copy of the comments on the proposal or any request for a public hearing must be simultaneously submitted by mail to Denise Benbow, Nursing Practice Consultant, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701; by e-mail to denise.benbow@bon.texas.gov; or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority.

The amendments are proposed under Occupations Code §§301.151, 301.152, and 301.303 - 301.307.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (1) perform its duties and conduct proceedings before the Board; (2) regulate the practice of professional nursing and vocational nursing; (3) establish standards of professional conduct for license holders under Chapter 301; and (4) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.152(a) defines "advanced practice registered nurse" as a registered nurse licensed by the board to practice as an advanced practice registered nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner" and "advanced practice nurse." Section 301.152(b) authorizes the board to adopt rules to: (1) license a registered nurse as an advanced practice registered nurse; (2) establish: (A) any specialized education or training, including pharmacology, that an advanced practice registered nurse must have to prescribe or order a drug or device as delegated by a physician under §157.0512 or 157.054; (B) a system for approving an advanced practice registered nurse to prescribe or order a drug or device as delegated by a physician under §157.0512 or §157.054 on the receipt of evidence of completing the specialized education and training requirement under Paragraph (A); and (C) a system for issuing a prescription authorization number to an advanced practice registered nurse approved under Paragraph (B); and (3) concurrently renew any license or approval granted to an advanced practice registered nurse under this subsection and a license renewed by the advanced practice registered nurse under §301.301. Section 301.152(c) requires the rules adopted under subsection (b)(2)of this section must: (1) require completion of pharmacology and related pathophysiology education for initial approval; and (2) require continuing education in clinical pharmacology and related pathophysiology in addition to any continuing education otherwise required under §301.303. Section 301.152(d) provides that the signature of an advanced practice registered nurse attesting to the provision of a legally authorized service by the advanced practice registered nurse satisfies any documentation requirement for that service established by a state agency.

Section 301.303(a) provides that the board may recognize, prepare, or implement continuing competency programs for license holders under this chapter and may require participation in continuing competency programs as a condition of renewal of a license. The programs may allow a license holder to demonstrate competency through various methods, including: (1) completion of targeted continuing education programs; and (2) consideration of a license holder's professional portfolio, including certifications held by the license holder. Section 301.303(b) provides that the board may not require participation in more than a total of 20 hours of continuing education in a two-year licensing period. Section 301.303(c) provides that if the board requires participation in continuing education programs as a condition of license renewal, the board by rule shall establish a system for the approval of programs and providers of continuing education. Section 301.303(e) authorizes the board to adopt other rules as necessary to implement this section. Section 301.303(f) states that the board may assess each program and provider under this section a fee in an amount that is reasonable and necessary to defray the costs incurred in approving programs and providers. Section 301.303(g) authorizes the board by rule to establish guidelines for targeted continuing education required under Chapter 301. The rules adopted under §301.303(g) must address: (1) the nurses who are required to complete the targeted continuing education program; (2) the type of courses that sat-

isfy the targeted continuing education requirement; (3) the time in which a nurse is required to complete the targeted continuing education; (4) the frequency with which a nurse is required to meet the targeted continuing education requirement; and (5) any other requirement considered necessary by the board.

Section 301.304(a) states that as part of the continuing education requirements under §301.303, a license holder whose practice includes the treatment of tick-borne diseases shall be encouraged to participate, during each two-year licensing period, in continuing education relating to the treatment of tick-borne diseases. Section 301.304(b) authorizes the board to adopt rules to identify the license holders who are encouraged to complete continuing education under §301.304(a) and establish the content of that continuing education. In adopting rules, the board shall seek input from affected parties and review relevant courses, including courses that have been approved in other states. Rules adopted under this section must provide that continuing education courses representing an appropriate spectrum of relevant medical clinical treatment relating to tick-borne diseases qualify as approved continuing education courses for license renewal. Section 301.304(c) states if relevant, the board shall consider a license holder's participation in a continuing education course approved under §301.304(b) if: (1) the license holder is being investigated by the board regarding the license holder's selection of clinical care for the treatment of tick-borne diseases; and (2) the license holder completed the course not more than two years before the start of the investigation. Section 301.304(d) authorizes the board to adopt other rules to implement this section, including rules under §301.303(c) for the approval of education programs and providers.

Section 301.305(a) states that as part of a continuing competency program under §301.303, a license holder shall complete at least two hours of continuing education relating to nursing jurisprudence and nursing ethics before the end of every third two-year licensing period. Section 301.305(b) authorizes the board to adopt rules implementing the requirement under §301.305(a) in accordance with the guidelines for targeted continuing education under §301.303(g). Section 301.305(c) states the board may not require a license holder to complete more than four hours of continuing education under this section.

Section 301.306(a) provides that as part of continuing education requirements under §301.303, a license holder who is employed to work in an emergency room setting and who is required under board rules to comply with this section shall complete at least two hours of continuing education relating to forensic evidence collection not later than: (1) September 1, 2008; or (2) the second anniversary of the initial issuance of a license under this chapter to the license holder. Section 301.306(b) states that the continuing education required under §301.306(a) must be part of a program approved under §301.303(c). Section 301.306(c) authorizes the board to adopt rules to identify the license holders who are required to complete continuing education under §301.306(a) and to establish the content of that continuing education. The board may adopt other rules to implement this section, including rules under §301.303(c) for the approval of education programs and providers.

Section 301.307(a) states as part of a continuing competency program under §301.303, a license holder whose practice includes older adult or geriatric populations shall complete at least two hours of continuing education relating to older adult or geriatric populations or maintain certification in an area of practice relating to older adult or geriatric populations. Section 301.307(b) authorizes the board to adopt rules implementing the requirement under subsection (a) of this section in accordance with the guidelines for targeted continuing education under §301.303(g). Section 301.307(c) states the board may not require a license holder to complete more than six hours of continuing education under this section.

Cross Reference to Statute.

The following statutes are affected by this proposal: Occupations Code §§301.151, 301.152, and 301.303 - 301.307.

§216.1. Definitions.

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

(1) - (5) (No change.)

(6) Authorship--Development and publication of a manuscript related to nursing and health care that is published in a nursing or health-related textbook or journal.

(7) - (15) (No change.)

(16) Program development and presentation--Formulation of the purpose statement, objectives and associated content and/or presentation of an approved CNE activity.

(17) [~~(16)~~] Program number--A unique number assigned to a program upon approval which shall identify it regardless of the number of times it is presented.

(18) [~~(17)~~] Provider--An individual, partnership, organization, agency or institution approved by an organization recognized by the Board which offers continuing education programs.

(19) [~~(18)~~] Provider number--A unique number assigned to the provider upon approval by the credentialing agency or organization.

§216.5. Additional Criteria for Specific Continuing Education Programs.

(a) In addition to those programs reviewed by a Board approved entity, a licensee may attend an academic course that meets the following criteria:

(1) The course shall be within the framework of a curriculum that leads to an academic degree in nursing or any academic course directly relevant to the licensee's area of nursing practice.

(2) Participants, upon audit by the Board, shall be able to present an official transcript indicating completion of the course with a grade of "C" or better, or a "Pass" on a Pass/Fail grading system.

(b) Program Development and Presentation. Development and presentation of a program that is approved by one of the credentialing agencies or providers approved by the Board.

(1) Upon audit by the Board, the licensee must submit to the Board on one page: the title of the program, program objectives, brief outline of content, credentialing agency, provider number assigned to the program, dates and locations of the presentation, and number of contact hours.

(2) Contact hours for a presentation shall equal the number of contact hours awarded by a credentialing agency or provider approved by the Board. Contact hours may be obtained by this means by the nurse(s) who developed and/or presented the qualifying program per renewal period. Only distinct activities may be used to obtain contact hours by this means for a renewal period.

(c) Authorship. A licensee may receive CE credit for development and publication of a manuscript related to nursing and health care.

(1) Upon audit by the Board, the licensee must submit a letter from the publisher indicating acceptance of the manuscript for publication or a copy of the published work.

(2) One contact hour per distinct publication may be obtained by this means per renewal period.

§216.6. Activities that [~~That~~] are not Acceptable as Continuing Education.

The following activities do not meet continuing education requirements for licensure renewal.

(1) - (9) (No change.)

(10) Self-directed study--An educational activity wherein the learner takes the initiative and the responsibility for assessing, planning, implementing and evaluating the activity including, but not limited to, academic courses that are audited, or that are not directly relevant to a licensee's area of nursing practice, or that are prerequisite courses such as mathematics, physiology, biology, government, or other similar courses are not acceptable.[:]

[~~(A) academic courses that are audited, or that are not directly relevant to a licensee's area of nursing practice, or that are prerequisite courses such as mathematics, physiology, biology, government, or other similar courses are not acceptable; and~~]

[~~(B) authorship.~~]

(11) (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 8, 2014.

TRD-201404269
James W. Johnston
General Counsel
Texas Board of Nursing
Earliest possible date of adoption: October 19, 2014
For further information, please call: (512) 305-6821

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.7

The Texas State Board of Examiners of Psychologists proposes an amendment to 22 TAC §461.7, License Statuses. The proposed amendment will clarify the rule concerning the retirement of licenses and will afford licensees the opportunity to retire their license with a delinquent status in the same manner that licensees with an active or inactive status may retire their license. The rule will continue to prohibit, however, licensees with pending complaints or restricted licenses from retiring their license.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, by mail at 333 Guadalupe, Suite 2-450, Austin, TX 78701; by phone at (512) 305-7700; or by email at brenda@tsbep.texas.gov within 30 days of publication of this proposal in the *Texas Register.*

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§461.7. License Statuses.

(a) Active Status. Any licensee with a license on active status may practice psychology pursuant to that license. Any license that is not on inactive, delinquent, retired, resigned, void or revoked status is considered to be on active status. Active status is the only status under which a licensee may engage in the practice of psychology.

(b) Inactive Status.

(1) A licensee may elect inactive status by applying to the Board and paying the fee set in Board rule §473.5(b) of this title (relating to Miscellaneous Fees (Not Refundable)).

(2) Licensees who seek inactive status must return their license to the Board. A licensee may not practice psychology under an inactive license.

(3) A licensee may place their [~~his/her~~] active license on inactive status for a period of two years. Reactivation of this license may occur at any time during this two-year period without the person having to take an exam provided that the person has notified the Board and has paid the required fees. At the end of the two-year period, if the license has not been reactivated, the license automatically becomes void. The inactive status may be extended for additional increments of two years if, prior to the end of each two-year period, the person notifies the Board in writing that an extension is requested and submits proof to the Board of continuous licensure by a psychology licensing board in this or another jurisdiction for the past two-year period and payment of all required fees. A licensee may indefinitely remain on inactive status if they are [~~he/she is~~] licensed in this or another jurisdiction and comply [~~complies~~] with the extension requirements set forth in this paragraph. Any licensee wishing to reactivate their [~~his/her~~] license that has been on inactive status for four years or more must take and pass the Jurisprudence Exam with the minimum acceptable score as set forth in Board rule §463.14 of this title (relating to Written Examinations) unless the licensee holds another license on active status with this Board.

(4) Any licensee who returns to active status after having been on inactive status must provide proof of compliance with Board rule §461.11 of this title (relating to Professional Development) before reactivation will occur.

(5) A licensee with a pending complaint may not place a license on inactive status. If disciplinary action is taken against a licensee's inactive license, the licensee must reactivate the license until the action has been terminated.

(6) Inactive status may be extended for two additional years upon the Board's review and approval of medical documentation of a catastrophic medical condition of the licensee. The request for this extension must be received in writing before the end of the current inactive status period and requires payment of the $100 inactive status fee.

(c) Delinquent Status. A licensee who fails to renew their [~~his/her~~] license for any reason when required is considered to be on delinquent status. Any license delinquent for more than 12 consecutive months shall be void (non-payment). A licensee may not engage in the practice of psychology under a delinquent license. The Board may sanction a delinquent licensee for violations of Board rules.

(d) Restricted status. Any license that is currently suspended, on probated suspension, or is currently required to fulfill some requirements in a Board order is considered to be on restricted status. A licensee practicing under a restricted license must comply with any restrictions placed thereon by the Board.

(e) Retirement Status. A licensee who is on active or inactive status with the Board may retire their license by notifying the Board in writing prior to the renewal date for the license. A licensee with a delinquent status may also retire their license by notifying the Board in writing prior to the license going void. However, a licensee with a pending complaint or restricted license may not retire their license. [~~seeking to retire after his or her renewal date must submit proof of compliance with the Board's professional development requirement. A licensee with a pending complaint, a restricted license, or who is otherwise not in compliance with all applicable Board rules may not retire his or her license. Permission to retire will not be granted for the purpose of allowing a licensee to avoid compliance with Board rule §461.11 of this title applies, unless the licensee presents to the Board evidence of extreme medical hardship and the Board grants the request.~~] A licensee who retires their license shall be reported to have retired in good standing.

(f) Resignation Status. A licensee may resign only upon express agreement by the Board. A licensee who resigns shall be reported as:

(1) Resigned in lieu of adjudication if permitted to resign while a complaint is pending; or

(2) Resigned in lieu of further disciplinary action if permitted to resign while the license is subject to restriction.

(g) Void (Non-Payment) Status. The Board may void any license that has been delinquent for 12 months or more or any inactive license that has expired. An individual may not engage in the practice of psychology under a void license. A license that has been voided may not be reinstated for any reason. A licensee whose license has been voided must submit a new application if they wish [~~he or she wishes~~] to obtain a new license with the Board.

(h) Revoked Status. A license is revoked pursuant to Board Order requiring revocation as a disciplinary action.

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

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7700

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22 TAC §461.10

The Texas State Board of Examiners of Psychologists proposes new rule §461.10, concerning License Required. The new rule would incorporate the licensure requirement set out in Texas Occupations Code Ann. §501.251 and would also clarify the Board's jurisdiction over non-exempt providers of psychological services when those services occur, either in whole or in part, within the State.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the new rule will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed rule may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, by mail at 333 Guadalupe, Suite 2-450, Austin, TX 78701; by phone at (512) 305-7700; or by email at brenda@tsbep.texas.gov within 30 days of publication of this proposal in the *Texas Register.*

The new rule is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§461.10. License Required.

(a) A person may not engage in or represent that the person is engaged in the practice of psychology within this State, unless the person is licensed or been issued trainee status by the Board, or the person is exempt under §501.004 of the Psychologists' Licensing Act.

(b) A person is engaged in the practice of psychology within this State if any of the criteria set out in §501.003(b) of the Psychologists' Licensing Act occurs within this State, either in whole or in part.

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

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CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.11

The Texas State Board of Examiners of Psychologists proposes an amendment to 22 TAC §463.11, Licensed Psychologist. The proposed amendment would allow licensed specialists in school psychology to use their title while acquiring the supervised experience required for full licensure, without compromising the reasonable measures of protection afforded the public elsewhere in the rule. By way of example, the proposed amendment would not detract from a supervisee's duty to inform the recipient of services of their supervisory status or how the recipient may contact the supervisor directly. Thus, the public would be apprised of the provider's licensure status and level of education and training in the same manner as provisionally licensed psychologists and licensed psychological associates undergoing the required periods of supervised experience.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, by mail at 333 Guadalupe, Suite 2-450, Austin, TX 78701; by phone at (512) 305-7700; or by email at brenda@tsbep.texas.gov within 30 days of publication of this proposal in the *Texas Register*.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.11. Licensed Psychologist.

(a) Application Requirements by Provisional Licensure. This application is provided free of charge to the applicant who has taken the Oral Examination. Upon passage of the Oral Examination, the applicant may submit the licensed psychologist application. An application for licensure as a psychologist includes, in addition to the requirements set forth in Board rule §463.5(1) of this title (relating to Application File Requirements):

(1) Documentation of current licensure as a provisionally licensed psychologist in good standing.

(2) Documentation indicating passage of the Board's Oral Examination.

(3) Documentation of two years of supervised experience from a licensed psychologist which satisfies the requirements of the Board. The formal year must be documented by the Director of Internship Training.

(4) Documentation of licensure in other jurisdictions, including information on disciplinary action and pending complaints, sent directly to the Board.

(b) Degree Requirements. The degree requirements for licensure as a psychologist are the same as for provisional licensure as stated in Board rule §463.10 of this title (relating to Provisionally Licensed Psychologist).

(c) Supervised Experience. In order to qualify for licensure, a psychologist must submit proof of two years of supervised experience, at least one year of which must have been received after the doctoral degree was officially conferred or completed, whichever is earliest, as shown on the official transcript, and at least one year of which must have been a formal internship. The formal internship year may be met either before or after the doctoral degree is conferred or completed. Supervised experience must be obtained in a minimum of two, and no more than three, calendar years, for full-time experience.

(1) General. All supervised experience for licensure as a psychologist, including the formal internship, must meet the following requirements:

(A) Experience may be obtained only in either a full-time or half-time setting.

(B) A year of full-time supervised experience is defined as a minimum of 35 hours per week employment/experience in not less than 12 consecutive calendar months in not more than two placements.

(C) A year of half-time supervised experience is defined as a minimum of 20 hours per week employment/experience in not less than 24 consecutive calendar months in not more than two placements.

(D) A year of full-time experience may be acquired through a combination of half-time and full-time employment/experience provided that the equivalent of a full-time year of supervision experience is satisfied.

(E) One calendar year from the beginning of ten consecutive months of employment/experience in an academic setting constitutes one year of experience.

(F) When supervised experience is interrupted, the Board may waive upon a showing of good cause by the supervisee, the requirement that the supervised experience be completed in consecutive months. Any consecutive experience obtained before or after the gap must be at least six months unless the supervisor remains the same. Waivers for such gaps are rarely approved and must be requested in writing and include sufficient documentation to permit verification of the circumstances supporting the request. No waiver will be granted unless the Board finds that the supervised experience for which the waiver is sought was adequate and appropriate. Good cause is defined as:

(i) unanticipated discontinuance of the supervision setting,

(ii) maternity or paternity leave of supervisee,

(iii) relocation of spouse or spousal equivalent,

(iv) serious illness of the supervisee, or serious illness in supervisee's immediate family.

(G) A rotating internship organized within a doctoral program is considered to be one placement.

(H) The experience requirement must be obtained after official enrollment in a doctoral program.

(I) All supervised experience must be received from a psychologist licensed at the time supervision is received.

(J) The supervising psychologist must be trained in the area of supervision provided to the supervisee.

(K) No experience which is obtained from a psychologist who is related within the second degree of affinity or within the second degree by consanguinity to the person may be considered.

(L) All supervised experience obtained for the purpose of licensure must be conducted in accordance with all applicable Board rules.

(M) Experience received from a psychologist while the psychologist is practicing subject to an Agreed Board Order or Board Order shall not, under any circumstances, qualify as supervised experience for licensure purposes regardless of the setting in which it was received. Psychologists who become subject to an Agreed Board Order or Board Order shall inform all supervisees of the Agreed Board Order or Board Order and assist all supervisees in finding appropriate alternate supervision.

(N) The supervisee shall be designated by a title that clearly indicates a supervisory licensing status such as "intern," "resident," "trainee," or "fellow." An individual who is a provisionally licensed psychologist or a licensed psychological associate may use their [~~this~~] title so long as those receiving psychological services are clearly informed that the individual is under the supervision of a licensed psychologist. An individual who is a licensed specialist in school psychology may use their title so long as the supervised experience takes place within the public schools, and those receiving psychological services are clearly informed that the individual is under the supervision of an individual who is licensed as a psychologist and specialist in school psychology. Use of a different job title is permitted only if the supervisee is providing services for a government facility or other facility exempted under §501.004 of the Act (Applicability) and the supervisee is using a title assigned by that facility.

(O) The supervisee and supervisor must clearly inform those receiving psychological services as to the supervisory status of the individual and how the patient or client may contact the supervising licensed psychologist directly.

(2) Formal Internship. At least one year of experience must be satisfied by one of the following types of formal internship:

(A) The successful completion of an internship program accredited by the American Psychological Association (APA); or

(B) The successful completion of an organized internship meeting all of the following criteria:

(i) It must constitute an organized training program which is designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose of the program must be to assure breadth and quality of training.

(ii) The internship agency must have a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed/certified by the licensing board of the jurisdiction in which the internship takes place and who is present at the training facility for a minimum of 20 hours a week.

(iii) The internship agency must have two or more full-time licensed psychologists on the staff as primary supervisors.

(iv) Internship supervision must be provided by a staff member of the internship agency or by an affiliate of that agency who carries clinical responsibility for the cases being supervised.

(v) The internship must provide training in a range of assessment and intervention activities conducted directly with patients/clients.

(vi) At least 25% of trainee's time must be in direct patient/client contact (minimum 375 hours).

(vii) The internship must include a minimum of two hours per week (regardless of whether the internship was completed in one year or two) of regularly scheduled formal, face-to-face individual supervision. There must also be at least two additional hours per week in learning activities such as: case conferences involving a case in which the intern was actively involved; seminars dealing with psychology issues; co-therapy with a staff person including discussion; group supervision; additional individual supervision.

(viii) Training must be post-clerkship, post-practicum and post-externship level.

(ix) The internship agency must have a minimum of two full-time equivalent interns at the internship level of training during applicant's training period.

(x) The internship agency must inform prospective interns about the goals and content of the internship, as well as the expectations for quantity and quality of trainee's work; or

(C) The successful completion of an organized internship program in a school district meeting the following criteria:

(i) The internship experience must be provided at or near the end of the formal training period.

(ii) The internship experience must occur on a full-time basis over a period of one academic year, or on a half-time basis over a period of two consecutive academic years.

(iii) The internship experience must be consistent with a written plan and must meet the specific training objectives of the program.

(iv) The internship experience must occur in a setting appropriate to the specific training objectives of the program.

(v) At least 600 clock hours of the internship experience must occur in a school setting and must provide a balanced exposure to regular and special educational programs.

(vi) The internship experience must occur under conditions of appropriate supervision. Field-based internship supervisors, for the purpose of the internship that takes place in a school setting, must be licensed as a psychologist and, if a separate credential is required to practice school psychology, must have a valid credential to provide psychology in the public schools. The portion of the internship which appropriately may take place in a non-school setting must be supervised by a psychologist.

(vii) Field-based internship supervisors must be responsible for no more than two interns at any given time. University internship supervisors shall be responsible for no more than twelve interns at any given time.

(viii) Field-based internship supervisors must provide at least two hours per week of direct supervision for each intern. University internship supervisors must maintain an ongoing relationship with field-based internship supervisors and shall provide at least one field-based contact per semester with each intern.

(ix) The internship site shall inform interns concerning the period of the internship and the training objectives of the program.

(x) The internship experience must be systematically evaluated in a manner consistent with the specific training objectives of the program.

(xi) The internship experience must be conducted in a manner consistent with the current legal-ethical standards of the profession.

(xii) The internship agency must have a minimum of two full-time equivalent interns at the internship level during the applicant's training period.

(xiii) The internship agency must have the availability of at least two full-time equivalent psychologists as primary supervisors, at least one of whom is employed full time at the agency and is a school psychologist.

(3) Industrial/Organizational Requirements. Individuals enrolled in an Industrial/Organizational doctoral degree program are exempt from the formal internship requirement and must complete two full years of supervised experience, at least one of which must be received after the doctoral degree is conferred and both of which must meet the requirements of paragraph (1) of this subsection. Individuals who do not undergo a formal internship pursuant to this paragraph should note that Board rules prohibit a psychologist from practicing in an area in which she does not have sufficient training and experience, of which a formal internship year is considered to be an integral requirement.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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22 TAC §463.23

The Texas State Board of Examiners of Psychologists proposes an amendment to 22 TAC §463.23, Criteria for Examination Consultants. The proposed amendment is being offered to expand the pool of licensees eligible to serve as examiners for the Board's Oral Examination. The proposed amendment will also expand the pool of licensees eligible to serve on the Board's Written Exam Committee and in the Vignette Writing Workshop.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, by mail at 333 Guadalupe, Suite 2-450, Austin, TX 78701; by phone at (512) 305-7700; or by email at brenda@tsbep.texas.gov within 30 days of publication of this proposal in the *Texas Register.*

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.23. Criteria for Examination Consultants.

The Board may employ licensees [~~licensed psychologists~~] to act as consultants for purposes of developing and administering the Jurisprudence Examination and the Oral Examination. All such consultants shall be considered as agents of the Board. To be eligible to serve as a consultant for an examination, an individual must:

(1) Be currently licensed by the Board [~~as a psychologist~~] and must have three years of experience in their area of expertise as a licensee; [~~practiced within his/her area of expertise for the last five years;~~]

(2) Not be related within the second degree of affinity (marriage) or consanguinity (blood relationship) to an individual who has applied to take the examination;

(3) Have no restrictions or pending complaints against his/her license; and

(4) Be approved by the Board.

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

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22 TAC §463.24

The Texas State Board of Examiners of Psychologists proposes an amendment to 22 TAC §463.24, Oral Examination Workgroup. The proposed amendment will eliminate dated requirements, ensure the rule correctly reflects the Workgroup's duties, and eliminate redundant provisions.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to

comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, by mail at 333 Guadalupe, Suite 2-450, Austin, TX 78701; by phone at (512) 305-7700; or by email at brenda@tsbep.texas.gov within 30 days of publication of this proposal in the *Texas Register.*

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.24. Oral Examination Workgroup [~~Work Group~~].

(a) The Board establishes a Workgroup [~~work group~~] of Oral Examination consultants for the purpose of improving the consistency of the administration and the objectivity of the examination. Qualifications of the consultants are set by Board rule §463.23 of this title (relating to Criteria for Examination Consultants). Members of the Workgroup [~~work group~~] must be approved by the Board or its designee.

(b) The Workgroup [~~work group~~] will include persons interested in or affected by the regulation of the practice of psychology, including faculty members of college or university psychology departments and licensees with varying levels of experience.

(c) The Workgroup [~~work group~~] shall:

(1) review audio recordings [~~audiotapes~~] of passed and [~~or~~] failed examinations;

(2) review analyses of the performance of persons who failed the examination provided under §501.256(e) of the Act;

(3) assess scoring criteria and clinical scenarios used in the administration of the examination;

(4) recommend improvements to standardize the administration of the examination; and

(5) conduct other appropriate tasks.

(6) The Chair of the Workgroup [~~Work Group~~] will be appointed by the Board from among the consultants. The Chair will call the meetings of the consultants and direct the Workgroup's [~~work group's~~] activities.

(d) [~~(e)~~] The Chair of the Board's Oral Examination Committee will serve as the Board's liaison to the Oral Examination Workgroup. [~~work group.~~] This Board member will communicate the mission, goals and tasks to the Workgroup. [~~work group.~~] This Board member will serve as a resource to the Workgroup [~~work group~~] but will not directly participate in the evaluation of the Oral Examination. [~~This Board member will be responsible for ensuring that the recommendations of the work group approved by the Board are implemented.~~]

(e) The Workgroup will report the group's recommendations for improving the oral examination to the Board on a biennial basis. The Board liaison member will be responsible for ensuring that the recommendations of the Workgroup are presented to the Board for review and consideration for implementation.

(f) The Oral Examination will be modified, as necessary, based upon the Workgroup's recommendations, prior to the next scheduled examination.

[~~(f) The work group will report at least biennially to the Board the group's recommendations for improving the consistency of the administration and objectivity of the Oral Examination. The Board will modify the oral examination, as necessary, based on the work group's recommendations for the next administration of the Oral Examination.~~]

[~~(g) The first report of the work group must be submitted to the Board no later than January 2006. Necessary modifications to the Oral Examination based on the recommendations of the work group must be made to the examination by the January 2007 examination.~~]

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

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22 TAC §463.31

The Texas State Board of Examiners of Psychologists proposes an amendment to 22 TAC §463.31, Use of Other Mental Health License During Practicum, Internship, or Supervised Experience. The proposed amendment will allow all licensees of this Board to use their title when delivering psychological services during the supervised experience required for full licensure, without compromising the reasonable measures of protection afforded the public elsewhere in the Board's rules. The rule will continue to prohibit, however, the delivery of psychological services under a mental health license issued by another agency or jurisdiction, while acquiring the supervised experience required for full licensure.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, by mail at 333 Guadalupe, Suite 2-450, Austin, TX 78701; by phone at (512) 305-7700; or by email at brenda@tsbep.texas.gov within 30 days of publication of this proposal in the *Texas Register.*

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this

State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.31. Use of Other Mental Health License During [~~Titles during~~] Practicum, Internship, or [~~and~~] Supervised Experience [~~When Applicant Holds Another License~~].

(a) An individual who holds a mental health license, other than one issued by this Board, may not obtain the required practicum, internship, or supervised experience required for a license with this Board while practicing under that license. During the documented hours of the practicum, internship, or supervised experience, the individual may provide psychological services only under the authority of a qualified supervisor of the practicum, internship, or supervised experience.

(b) An individual subject to subsection (a) must comply with the Psychologists' Licensing Act and all applicable Board rules regarding the use of appropriate titles.

[~~Subject to the provisions herein, an individual who holds a license with this Board or any other type of mental health license may not obtain the required practicum, internship or supervised experience required for another license with this Board while practicing under the first license. During the documented hours of the practicum, internship or supervised experience, the individual may provide psychological services only under the authority of the qualified supervisor of the practicum, internship or supervised experience, not under the authority of the first license. The individual must use an appropriate title which is indicated by the Act and Board rules during the practicum, internship, or supervised experience that clearly indicates that the individual is being supervised; however, a licensed psychological associate may use their title while providing services within a practicum that is part of the person's supervised course of study to obtain a doctoral degree in psychology if the individual is being supervised by a licensed psychologist. Unless a specific exception is set out in another Board rule, the individual may not use the title of the first license during the documented hours of the practicum, internship, or supervised experience. All clients or patients that receive services from the individual seeking licensure must be informed that the individual is being supervised and how the supervisor may be contacted.~~]

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

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 140. HEALTH PROFESSIONS REGULATION

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§140.119, 140.150, 140.153, 140.201, 140.202, 140.208, 140.214, 140.417, 140.501, 140.502, and 140.579, the repeals of §§140.152, 140.203, and 140.503, and new §§140.24, 140.48, 140.121, 140.170, 140.218, 140.265, 140.287, 140.378, 140.433, 140.524, and 140.596, concerning the licensing and regulation of perfusionists, personal emergency response system providers, sanitarians, code enforcement officers, respiratory care practitioners, contact lens dispensers, opticians, massage therapists, chemical dependency counselors, medical radiologic technologists, and dyslexia therapists and dyslexia practitioners.

BACKGROUND AND PURPOSE

The proposed new rules and amendments implement Senate Bill 1733, 82nd Legislature, Regular Session, 2011, and Senate Bill 162 and House Bill 2254 of the 83rd Legislature, Regular Session, 2013, which amended Occupations Code, Chapter 55, relating to the occupational licensing of spouses of members of the military, the eligibility requirements for certain occupational licenses issued to applicants with military experience, and apprenticeship requirements for occupational licenses issued to applicants with military experience. The affected licensing programs are within the Professional Licensing and Certification Unit of the department's Division for Regulatory Services.

The proposed repeals and amendments for Subchapter D (Code Enforcement Officers), Subchapter E (Respiratory Care), and Subchapter J (Medical Radiologic Technologists) will remove all references to advisory committees within these subchapters. By rule, these committees have been abolished, and the proposed repeals will conform the rules to the actual operation of the programs. The proposed amendments for Subchapter C (Sanitarians) and Subchapter K (Dyslexia Therapists and Dyslexia Practitioners) will remove the advisory committee abolishment dates, since these committees will remain active.

The proposed amendments for the fee section of Subchapter D (Code Enforcement Officers) will remove the cost of the prescribed examination and re-examination.

SECTION-BY-SECTION SUMMARY

The proposed amendments to §§140.150, 140.201, 140.202, 140.208, 140.214, 140.501, and 140.502 remove advisory committee language for Subchapters D, E, and J to confirm the abolishment of these committees. The proposed amendments to Subchapter C, §140.119 and Subchapter K, §140.579 remove the abolishment dates for these committees, as these committees remain active. According to §140.119(e), the abolishment date for the Registered Sanitarian Advisory Committee was September 1, 2011. According to §140.579(e), the abolishment date for the Dyslexia Licensing Advisory Committee was September 1, 2013.

The proposed amendment to §140.153 will remove the fee amount of the Code Enforcement Officer examination, as administered by the department's designee. The amendment eliminates this fee cap, requiring the applicant to pay the cost of any prescribed examination. There will be a fiscal impact to persons who will pay the examination fee of $75. Registered code enforcement officers work for local governments, either municipalities or counties. The employer is not required to pay for registration fees, nor is state registration a requirement of law. The registration is a voluntary, title-protection credential

and is mandatory only if the individual wishes to use the title "code enforcement officer" in connection with their work.

The proposed repeal of §§140.152, 140.203, and 140.503 confirms the abolishment of the advisory committees for Subchapters D, E, and J. The Code Enforcement Officers' Advisory Committee abolishment date was September 1, 2011. The Respiratory Care Advisory Committee's abolishment date was November 1, 2011. The Medical Radiologic Technologist Advisory Committee's abolishment date was November 1, 2012.

The proposed new §§140.24, 140.48, 140.121, 140.170, 140.218, 140.265, 140.287, 140.378, 140.433, 140.524, and 140.596 add new language to define military service members, military spouses, and military veterans, as well as application and eligibility procedures that apply to those individuals. The amendment to §140.417 removes the language concerning military spouses and incorporates it into proposed new §140.433.

FISCAL NOTE

Cindy Bourland, Manager, Professional Licensing and Certification Unit, has determined that for each year of the first five years that the proposed sections will be in effect, there will be a fiscal savings to state government as a result of amending the examination fee rule in §140.153. The department currently spends $25 per Code Enforcement Officer Registration examination. For fiscal year 2013, 231 applicants took the examination and the department paid $25 per applicant, for a total of $5,775 in examination subsidies to the examination vendor. The proposed amended rule will eliminate the department's expenditures and require the registration applicant to pay the actual cost of the examination fee of $75 to the examination vendor.

There will be no fiscal impact to state or local governments as a result of enforcing and administering the remaining sections as proposed.

MICRO-BUSINESSES AND SMALL BUSINESSES IMPACT ANALYSIS

Ms. Bourland has also determined that there will be no adverse economic effect on small businesses or micro-businesses. This determination was made because the economic costs imposed by the proposed amendments and new rules are to individual licensees and applicants, but do not impose any new requirements on businesses.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are anticipated economic costs to persons who will pay the examination fee in §140.153. The actual cost of the Code Enforcement Officer examination is $75 per applicant, assessed by the examination vendor. Currently, the department pays $25 of this cost due to the $50 fee cap in the rules. With the elimination of the fee cap, the full cost of $75 will be paid by the applicant. There will be a cost increase of $25 to persons who will pay a fee for the examination. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule with the specific intent 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

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

PUBLIC BENEFIT

In addition, Ms. Bourland has also determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the licensing and regulation of perfusionists, personal emergency response system providers, sanitarians, code enforcement officers, respiratory care practitioners, contact lens dispensers, opticians, massage therapists, chemical dependency counselors, medical radiologic technologists, and dyslexia therapists and practitioners, and to increase the availability of licensed health professionals by facilitating the occupational licensing of applicants with applicable military experience and of qualified military spouses.

PUBLIC COMMENT

Comments on the proposal may be submitted to Crystal Beard, Program Director, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6628, or by email to crystal.beard@dshs.state.tx.us. When emailing comments, please indicate "Comments on Proposed Rules" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER A. PERFUSIONISTS

25 TAC §140.24

The new rule is authorized by Occupations Code, Chapter 55, and §§352.053, 353.005, 403.052, 455.051, 504.051, 601.052, 603.152, 604.052, 781.051, 1952.051, and 1953.051, which authorize the adoption of rules for the licensing and regulation of opticians, contact lens dispensers, dyslexia therapists and practitioners, massage therapists, chemical dependency counselors, medical radiologic technologists, perfusionists, respiratory care practitioners, personal emergency response system providers, code enforcement officers, and sanitarians. The proposed changes are authorized by Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new rule affects Occupations Code, Chapters 55, 352, 353, 403, 455, 504, 601, 603, 604, 781, 1952, and 1953.

§140.24. Licensing of Military Service Members, Military Veterans, and Military Spouses.

(a) This section sets out licensing procedures for military service members, military veterans, and military spouses required under Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section, the following terms shall have the following meanings:

(1) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(2) Military spouse--A person who is married to a military service member who is currently on active duty.

(3) Military veteran--A person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(b) An applicant shall provide documentation of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under the requirements of this section.

(c) Upon request, an applicant shall provide acceptable proof of current licensure issued by another jurisdiction. Upon request, the applicant shall provide proof that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of this state.

(d) The department's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the requirements of this section.

(e) For an application for a license submitted by a verified military service member or military veteran, the applicant shall receive credit towards any licensing or apprenticeship requirements, except an examination requirement, for verified military service, training, or education that is relevant to the occupation, unless he or she holds a restricted license issued by another jurisdiction or if he or she has an unacceptable criminal history as described by the Act and this chapter.

(f) An applicant who is a military spouse who holds a current license issued by another jurisdiction that has substantially equivalent licensing requirements shall complete and submit an application form and fee. The department shall issue a license to a qualified applicant who holds such a license as soon as practicable and the renewal of the license shall be in accordance with subsection (i) of this section.

(g) In accordance with Occupations Code, §55.004(c), the executive secretary may waive any prerequisite to obtaining a license after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

(h) A military spouse who within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months is qualified for licensure based on the previously held license, if there are no unresolved complaints against the applicant and if there is no other bar to licensure, such as criminal background or non-compliance with a department order.

(i) If the department issues an initial license to an applicant who is a military spouse in accordance with subsection (f) of this section, the department shall assess whether the applicant has met all licensing requirements of this state by virtue of the current license issued by another jurisdiction. The department shall provide this assessment in writing to the applicant at the time the license is issued. If the applicant has not met all licensing requirements of this state, the applicant must provide proof of completion at the time of the first application for license renewal. A license shall not be renewed, shall be allowed to expire, and shall become ineffective if the applicant does not provide proof of completion at the time of the first application for licensure renewal.

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

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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 776-6972

SUBCHAPTER B. PERSONAL EMERGENCY RESPONSE SYSTEM PROVIDERS PROGRAM

25 TAC §140.48

STATUTORY AUTHORITY

The new rule is authorized by Occupations Code, Chapter 55 and §§352.053, 353.005, 403.052, 455.051, 504.051, 601.052, 603.152, 604.052, 781.051, 1952.051, and 1953.051, which authorize the adoption of rules for the licensing and regulation of opticians, contact lens dispensers, dyslexia therapists and practitioners, massage therapists, chemical dependency counselors, medical radiologic technologists, perfusionists, respiratory care practitioners, personal emergency response system providers, code enforcement officers, and sanitarians. The proposed changes are authorized by Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new rule affects Occupations Code, Chapters 55, 352, 353, 403, 455, 504, 601, 603, 604, 781, 1952, and 1953.

§140.48. Registration of Military Service Members, Military Veterans, and Military Spouses.

(a) This section sets out registration procedures for military service members, military veterans, and military spouses required under Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section, the following terms shall have the following meanings:

(1) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(2) Military spouse--A person who is married to a military service member who is currently on active duty.

(3) Military veteran--A person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(b) An applicant shall provide documentation of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under the requirements of this section.

(c) Upon request, an applicant shall provide acceptable proof of current licensure or registration issued by another jurisdiction. Upon request, the applicant shall provide proof that the licensing or registration requirements of that jurisdiction are substantially equivalent to the registration requirements of this state.

(d) The department's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the requirements of this section.

(e) For an application for registration submitted by a verified military service member or military veteran, the applicant shall receive credit towards any registration requirements, except an examination requirement, for verified military service, training, or education that is relevant to the occupation, unless he or she holds a restricted license or registration issued by another jurisdiction or if he or she has an unacceptable criminal history as described by the Act and this chapter.

(f) An applicant who is a military spouse who holds a current license or registration issued by another jurisdiction that has substantially equivalent licensing or registration requirements shall complete and submit an application form and fee. The department shall issue a registration to a qualified applicant who holds such a license or registration as soon as practicable and the renewal of the registration shall be in accordance with subsection (i) of this section.

(g) In accordance with Occupations Code, §55.004(c), the department may waive any prerequisite to obtaining a registration after reviewing the applicant's credentials and determining that the applicant holds a license or registration issued by another jurisdiction that has licensing or registration requirements substantially equivalent to those of this state.

(h) A military spouse who within the five years preceding the application date held the registration in this state that expired while the applicant lived in another state for at least six months is qualified for registration based on the previously held registration, if there are no unresolved complaints against the applicant and if there is no other bar to registration, such as criminal background or non-compliance with a department order.

(i) If the department issues an initial registration to an applicant who is a military spouse in accordance with subsection (f) of this section, the department shall assess whether the applicant has met all registration requirements of this state by virtue of the current license or registration issued by another jurisdiction. The department shall provide this assessment in writing to the applicant at the time the registration is issued. If the applicant has not met all registration requirements of this state, the applicant must provide proof of completion at the time of the first application for registration renewal. A registration shall not be renewed, shall be allowed to expire, and shall become ineffective if the applicant does not provide proof of completion at the time of the first application for registration renewal.

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

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Lisa Hernandez
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SUBCHAPTER C. SANITARIANS

25 TAC §140.119, §140.121

STATUTORY AUTHORITY

The amendment and new rule are authorized by Occupations Code, Chapter 55 and §§352.053, 353.005, 403.052, 455.051, 504.051, 601.052, 603.152, 604.052, 781.051, 1952.051, and 1953.051, which authorize the adoption of rules for the licensing and regulation of opticians, contact lens dispensers, dyslexia therapists and practitioners, massage therapists, chemical dependency counselors, medical radiologic technologists, perfusionists, respiratory care practitioners, personal emergency response system providers, code enforcement officers, and sanitarians. The proposed changes are authorized by Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The amendment and new rule affects Occupations Code, Chapters 55, 352, 353, 403, 455, 504, 601, 603, 604, 781, 1952, and 1953.

§140.119. Registered Sanitarian Advisory Committee.

(a) - (d) (No change.)

(e) Review. [and duration. By September 1, 2011, the] The department will periodically initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. [If the committee is not continued or consolidated, the committee shall be abolished on that date.]

(f) - (o) (No change.)

§140.121. Registration of Military Service Members, Military Veterans, and Military Spouses.

(a) This section sets out registration procedures for military service members, military veterans, and military spouses required under Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section, the following terms shall have the following meanings:

(1) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(2) Military spouse--A person who is married to a military service member who is currently on active duty.

(3) Military veteran--A person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(b) An applicant shall provide documentation of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under the requirements of this section.

(c) Upon request, an applicant shall provide acceptable proof of current registration issued by another jurisdiction. Upon request, the applicant shall provide proof that the registration requirements of that jurisdiction are substantially equivalent to the registration requirements of this state.

(d) The department's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the requirements of this section.

(e) For an application for a registration submitted by a verified military service member or military veteran, the applicant shall receive credit towards any registration or apprenticeship requirements, except an examination requirement, for verified military service, training, or education that is relevant to the occupation, unless he or she holds a restricted registration issued by another jurisdiction or if he or she has an unacceptable criminal history as described by the Act and this chapter.

(f) An applicant who is a military spouse who holds a current registration issued by another jurisdiction that has substantially equivalent registration requirements shall complete and submit an application form and fee. The department shall issue a registration to a qualified applicant who holds such a registration as soon as practicable and the renewal of the registration shall be in accordance with subsection (i) of this section.

(g) In accordance with Occupations Code, §55.004(c), the department may waive any prerequisite to obtaining a registration after reviewing the applicant's credentials and determining that the applicant holds a registration issued by another jurisdiction that has registration requirements substantially equivalent to those of this state.

(h) A military spouse who within the five years preceding the application date held the registration in this state that expired while the applicant lived in another state for at least six months is qualified for registration based on the previously held registration, if there are no unresolved complaints against the applicant and if there is no other bar to registration, such as criminal background or non-compliance with a department order.

(i) If the department issues an initial registration to an applicant who is a military spouse in accordance with subsection (f) of this section, the department shall assess whether the applicant has met all registration requirements of this state by virtue of the current registration issued by another jurisdiction. The department shall provide this assessment in writing to the applicant at the time the registration is issued. If the applicant has not met all registration requirements of this state, the applicant must provide proof of completion at the time of the first application for registration renewal. A registration shall not be renewed, shall be allowed to expire, and shall become ineffective if the applicant does not provide proof of completion at the time of the first application for registration renewal.

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

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Lisa Hernandez
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SUBCHAPTER D. CODE ENFORCEMENT OFFICERS

25 TAC §§140.150, 140.153, 140.170

STATUTORY AUTHORITY

The amendments and new rule are authorized by Occupations Code, Chapter 55 and §§352.053, 353.005, 403.052, 455.051, 504.051, 601.052, 603.152, 604.052, 781.051, 1952.051, and 1953.051, which authorize the adoption of rules for the licensing and regulation of opticians, contact lens dispensers, dyslexia therapists and practitioners, massage therapists, chemical dependency counselors, medical radiologic technologists, perfusionists, respiratory care practitioners, personal emergency response system providers, code enforcement officers, and sanitarians. The proposed changes are authorized by Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendments and new rule affect Occupations Code, Chapters 55, 352, 353, 403, 455, 504, 601, 603, 604, 781, 1952, and 1953.

§140.150. Purpose and Scope.

(a) (No change.)

(b) Scope. These sections cover definitions; [~~the advisory committee;~~] fees; application procedures; registration qualification requirements; educational requirements; examinations; determination of eligibility; registration and registration renewal; grounds for suspension or revocation; registration of persons with criminal backgrounds; violations, complaints, investigations, and disciplinary actions; processing applications; exemptions; advertising; and continuing education.

§140.153. Fees.

(a) (No change.)

(1) - (5) (No change.)

(6) examination fee--the cost of any prescribed exam; [~~fees:~~]

[~~(A) department administered--$50; or~~]

[~~(B) administered by department's designee--the amount specified in the contract between the department and the designee, not to exceed $50;~~]

(7) reexamination fee--the cost of any prescribed exam; and [~~$50; and~~]

(8) (No change.)

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

§140.170. Registration of Military Service Members, Military Veterans, and Military Spouses.

(a) This section sets out registration procedures for military service members, military veterans, and military spouses required under Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section, the following terms shall have the following meanings:

(1) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(2) Military spouse--A person who is married to a military service member who is currently on active duty.

(3) Military veteran--A person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(b) An applicant shall provide documentation of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under the requirements of this section.

(c) Upon request, an applicant shall provide acceptable proof of current registration issued by another jurisdiction. Upon request, the applicant shall provide proof that the registration requirements of that jurisdiction are substantially equivalent to the registration requirements of this state.

(d) The department's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the requirements of this section.

(e) For an application for a registration submitted by a verified military service member or military veteran, the applicant shall receive credit towards any registration or apprenticeship requirements, except an examination requirement, for verified military service, training, or education that is relevant to the occupation, unless he or she holds a restricted registration issued by another jurisdiction or if he or she has an unacceptable criminal history as described by the Act and this chapter.

(f) An applicant who is a military spouse who holds a current registration issued by another jurisdiction that has substantially equivalent registration requirements shall complete and submit an application form and fee. The department shall issue a registration to a qualified applicant who holds such a license as soon as practicable and the renewal of the registration shall be in accordance with subsection (i) of this section.

(g) In accordance with Occupations Code, §55.004(c), the department may waive any prerequisite to obtaining a registration after reviewing the applicant's credentials and determining that the applicant holds a registration issued by another jurisdiction that has registration requirements substantially equivalent to those of this state.

(h) A military spouse who within the five years preceding the application date held the registration in this state that expired while the applicant lived in another state for at least six months is qualified for registration based on the previously held registration, if there are no unresolved complaints against the applicant and if there is no other bar to registration, such as criminal background or non-compliance with a department order.

(i) If the department issues an initial registration to an applicant who is a military spouse in accordance with subsection (f) of this section, the department shall assess whether the applicant has met all registration requirements of this state by virtue of the current registration issued by another jurisdiction. The department shall provide this assessment in writing to the applicant at the time the registration is issued. If the applicant has not met all registration requirements of this state, the applicant must provide proof of completion at the time of the first application for registration renewal. A registration shall not be renewed, shall be allowed to expire, and shall become ineffective if the applicant does not provide proof of completion at the time of the first application for registration renewal.

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

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Lisa Hernandez
General Counsel
Department of State Health Services
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25 TAC §140.152

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of State Health Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is authorized by Occupations Code, Chapter 55 and §§352.053, 353.005, 403.052, 455.051, 504.051, 601.052, 603.152, 604.052, 781.051, 1952.051, and 1953.051, which authorize the adoption of rules for the licensing and regulation of opticians, contact lens dispensers, dyslexia therapists and practitioners, massage therapists, chemical dependency counselors, medical radiologic technologists, perfusionists, respiratory care practitioners, personal emergency response system providers, code enforcement officers, and sanitarians. The proposed changes are authorized by Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The repeal affects Occupations Code, Chapters 55, 352, 353, 403, 455, 504, 601, 603, 604, 781, 1952, and 1953.

§140.152. Code Enforcement Officers' Advisory Committee.

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

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SUBCHAPTER E. RESPIRATORY CARE

25 TAC §§140.201, 140.202, 140.208, 140.214, 140.218

STATUTORY AUTHORITY

The amendments and new rule are authorized by Occupations Code, Chapter 55 and §§352.053, 353.005, 403.052, 455.051, 504.051, 601.052, 603.152, 604.052, 781.051, 1952.051, and 1953.051, which authorize the adoption of rules for the licensing and regulation of opticians, contact lens dispensers, dyslexia therapists and practitioners, massage therapists, chemical dependency counselors, medical radiologic technologists, perfusionists, respiratory care practitioners, personal emergency response system providers, code enforcement officers, and sanitarians. The proposed changes are authorized by Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendments and new rule affect Occupations Code, Chapters 55, 352, 353, 403, 455, 504, 601, 603, 604, 781, 1952, and 1953.

§140.201. Context [~~Purpose and Scope~~].

These sections cover definitions; [~~the advisory committee;~~] fees; exceptions to certification; application requirements and procedures; types of certificates, temporary permits, and applicant eligibility; examination; certificate renewal; continuing education requirements; changes of name or address; professional and ethical standards; certifying or permitting persons with criminal background to be respiratory care practitioners; violations, complaints and subsequent actions; informal dispositions; and suspension of license relating to child support and child custody.

§140.202. Definitions.

The following words and terms when used in these sections, shall have the following meanings, unless the content clearly indicates otherwise:

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

[~~(3) Advisory committee--The Respiratory Care Practitioners Advisory Committee.~~]

(3) [~~(4)~~] Aides/orderlies--Health care workers who perform routine tasks under the direct supervision of a respiratory care practitioner such as transporting patients, assembling treatment equipment, preparing work areas, and other assigned duties. Aides/orderlies may not perform respiratory care procedures.

(4) [~~(5)~~] AMA--The American Medical Association.

(5) [~~(6)~~] Applicant--A person who applies to the Department of State Health Services for a certificate or temporary permit.

(6) [~~(7)~~] Appropriate educational agency--The Texas Education Agency or other governmental agency authorized by law or statute to approve educational institutions and curriculum, or an educational accrediting body of a professional organization, such as the Committee on Accreditation for Respiratory Care (COARC) and its predecessor or successor organization.

(7) [~~(8)~~] Certificate--A respiratory care practitioner certificate issued by the Department of State Health Services.

(8) [~~(9)~~] Commissioner--The commissioner of the Department of State Health Services.

(9) [~~(10)~~] Delegated authority--As defined in the Texas Medical Practice Act, Texas Occupations Code, Chapter 157 and the rules pertaining thereto adopted by the Texas Medical Board.

(10) [~~(11)~~] Department--The Department of State Health Services.

(11) [~~(12)~~] Diagnostic--Of or relating to or used in the art or act of identifying a disease or disorder.

(12) [~~(13)~~] Educational accrediting body--The Committee on Allied Health Education and Accreditation of the American Medical Association, or its successor organization which approves respiratory care education programs.

(13) [~~(14)~~] Executive Commissioner--Executive Commissioner of Health and Human Services Commission.

(14) [~~(15)~~] Formally trained--Completion of an organized educational activity which:

(A) includes supervised and directed instruction specific to the respiratory care procedures to be performed by the individual;

(B) includes specific objectives, activities, and an evaluation of competency; and

(C) is supervised and directed by another individual qualified to provide the training and supervision.

(15) [~~(16)~~] NBRC--The National Board for Respiratory Care, Inc., and its predecessor or successor organizations.

(16) [~~(17)~~] Palliative--Serving to moderate the intensity of pain or other disease process.

(17) [~~(18)~~] Practice--Engaging in respiratory care as a clinician, educator, or consultant.

(18) [~~(19)~~] Qualified medical director--A physician licensed and in good standing with the Texas Medical Board, and who has special interest and knowledge in the diagnosis and treatment of respiratory care problems and who is actively engaged in the practice of medicine. This physician must be a member of the active medical staff of a health care facility, agency or organization who supervises the provision of respiratory care.

(19) [~~(20)~~] Respiratory care--The treatment, management, control, diagnostic evaluation, and care of inpatients or outpatients who have deficiencies and abnormalities associated with the cardiorespiratory system. Respiratory care does not include the delivery, assembly, set up, testing, and demonstration of respiratory care equipment upon the order of a licensed physician. Demonstration is not to be interpreted here as the actual patient assessment and education, administration, or performance of the respiratory care procedure(s).

(20) [~~(21)~~] Respiratory care education program--

(A) a program in respiratory care approved by the educational accrediting body;

(B) a program approved by an appropriate education agency and working toward becoming an approved program in respiratory care. A program will qualify as a respiratory care education program under this subparagraph only for a period of one year from the date of the first class offered by the program; after that one year, the program must be an approved program in respiratory care; or

(C) a program accredited by the Canadian Medical Association and whose graduates are eligible to take the national registry exam given by the Canadian Board of Respiratory Care.

(21) [~~(22)~~] Respiratory care practitioner (RCP)--A person permitted or certified under the Act to practice respiratory care.

(22) [~~(23)~~] Respiratory care procedure--Respiratory care provided by the therapeutic and diagnostic use of medical gases, the delivery of humidification and aerosols, the administration of drugs and medications to the cardiorespiratory system, ventilatory assistance and ventilatory control, postural drainage, chest drainage, chest percussion or vibration, breathing exercises, respiratory rehabilitation, cardiopulmonary resuscitation, maintenance of natural airways, and the insertion and maintenance of artificial airways. The term includes a technique employed to assist in diagnosis, monitoring, treatment, and research, including the measurement of ventilatory volumes, pressures and flows, the specimen collection of blood and other materials, pulmonary function testing, and hemodynamic and other related physiological forms of monitoring or treating, as ordered by the patient's physician, the cardiorespiratory system. These procedures include:

(A) administration of medical gases--such as nitric oxide, helium and carbon dioxide;

(B) providing ventilatory assistance and ventilatory control--including high frequency oscillatory ventilation and high frequency jet ventilation;

(C) providing artificial airways--including insertion, maintenance and removal;

(D) performing pulmonary function testing--including neonatal and pediatric studies;

(E) hyperbaric oxygen therapy;

(F) monitoring--including pulse oximeter, end-tidal carbon dioxide and apnea monitoring;

(G) extracorporeal membrane oxygenation (ECMO);

(H) patient assessment, respiratory patient care planning; and

(I) implementation of respiratory care protocols.

(23) [~~(24)~~] Temporary permit--A permit issued in accordance with §140.207(d) of this title (relating to Types of Certificates, Temporary Permits, and Applicant Eligibility) for a period of six months.

(24) [~~(25)~~] TMB--Texas Medical Board.

(25) [~~(26)~~] Therapeutic--Of or relating to the treatment of disorders by remedial agents or methods.

(26) [~~(27)~~] Under the direction--Assuring that established policies are carried out; monitoring and evaluating the quality, safety, and appropriateness of respiratory care services and taking action based on findings; and providing consultation whenever required, particularly on patients receiving continuous ventilatory or oxygenation support.

§140.208. Examination.

(a) (No change.)

(b) Approved examination. The approved examination for all applicants consists of an entry level certified respiratory therapist (CRT) examination administered for the National Board for Respiratory Care, Inc. (NBRC) or its designee, or the department [~~advisory committee~~] may recommend an equivalent examination.

(c) - (f) (No change.)

§140.214. Violations, Complaints, and Subsequent Actions.

(a) - (d) (No change.)

(e) The department's action.

(1) - (3) (No change.)

(4) Whenever the department dismisses a complaint or closes a complaint file, the department shall give a summary report of the final action to [~~the advisory committee,~~] the complainant[~~,~~] and the accused party.

(f) - (h) (No change.)

§140.218. Certifying or Permitting of Military Service Members, Military Veterans, and Military Spouses.

(a) This section sets out certifying or permitting procedures for military service members, military veterans, and military spouses required under Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section, the following terms shall have the following meanings:

(1) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(2) Military spouse--A person who is married to a military service member who is currently on active duty.

(3) Military veteran--A person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(b) An applicant shall provide documentation of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under the requirements of this section.

(c) Upon request, an applicant shall provide acceptable proof of current certification or proof of a current permit issued by another jurisdiction. Upon request, the applicant shall provide proof that the certifying or permitting requirements of that jurisdiction are substantially equivalent to the certifying or permitting requirements of this state.

(d) The department's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the requirements of this section.

(e) For an application for a certificate or permit submitted by a verified military service member or military veteran, the applicant shall receive credit towards any certification, permit, or apprenticeship requirements, except an examination requirement, for verified military service, training, or education that is relevant to the occupation, unless he or she holds a restricted certificate or permit issued by another jurisdiction or if he or she has an unacceptable criminal history as described by the Act and this chapter.

(f) An applicant who is a military spouse who holds a current certificate or permit issued by another jurisdiction that has substantially equivalent certification or permit requirements shall complete and submit an application form and fee. The department shall issue a certificate or permit to a qualified applicant who holds such a certificate or permit as soon as practicable and the renewal of the certificate or permit shall be in accordance with subsection (i) of this section.

(g) In accordance with Occupations Code, §55.004(c), the program director may waive any prerequisite to obtaining a certificate or permit after reviewing the applicant's credentials and determining that the applicant holds a certificate or permit issued by another jurisdiction that has certification or permit requirements substantially equivalent to those of this state.

(h) A military spouse who within the five years preceding the application date held the certificate or permit in this state that expired while the applicant lived in another state for at least six months is qualified for certification or a permit based on the previously held certificate or permit, if there are no unresolved complaints against the applicant and if there is no other bar to certification or a permit, such as criminal background or non-compliance with a department order.

(i) If the department issues an initial certificate or permit to an applicant who is a military spouse in accordance with subsection (f) of this section, the department shall assess whether the applicant has met all certification or permit requirements of this state by virtue of the current certification or permit issued by another jurisdiction. The department shall provide this assessment in writing to the applicant at the time the certificate or permit is issued. If the applicant has not met all requirements of this state, the applicant must provide proof of completion at the time of the first application for certificate or permit renewal. A certificate or permit shall not be renewed, shall be allowed to expire, and shall become ineffective if the applicant does not provide proof of completion at the time of the first application for certification or permit renewal.

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

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25 TAC §140.203

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of State Health Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is authorized by Occupations Code, Chapter 55 and §§352.053, 353.005, 403.052, 455.051, 504.051, 601.052, 603.152, 604.052, 781.051, 1952.051, and 1953.051, which authorize the adoption of rules for the licensing and regulation of opticians, contact lens dispensers, dyslexia therapists and practitioners, massage therapists, chemical dependency counselors, medical radiologic technologists, perfusionists, respiratory care practitioners, personal emergency response system providers, code enforcement officers, and sanitarians. The proposed changes are authorized by Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The repeal affects Occupations Code, Chapters 55, 352, 353, 403, 455, 504, 601, 603, 604, 781, 1952, and 1953.

§140.203. Respiratory Care Practitioners Advisory Committee.

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

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SUBCHAPTER F. CONTACT LENS DISPENSERS

25 TAC §140.265

STATUTORY AUTHORITY

The new rule is authorized by Occupations Code, Chapter 55 and §§352.053, 353.005, 403.052, 455.051, 504.051, 601.052, 603.152, 604.052, 781.051, 1952.051, and 1953.051, which authorize the adoption of rules for the licensing and regulation of opticians, contact lens dispensers, dyslexia therapists and practitioners, massage therapists, chemical dependency counselors, medical radiologic technologists, perfusionists, respiratory care practitioners, personal emergency response system providers, code enforcement officers, and sanitarians. The proposed changes are authorized by Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new rule affects Occupations Code, Chapters 55, 352, 353, 403, 455, 504, 601, 603, 604, 781, 1952, and 1953.

§140.265. Permitting of Military Service Members, Military Veterans, and Military Spouses.

(a) This section sets out permitting procedures for military service members, military veterans, and military spouses required under Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section, the following terms shall have the following meanings:

(1) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve compo-

nent of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(2) Military spouse--A person who is married to a military service member who is currently on active duty.

(3) Military veteran--A person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(b) An applicant shall provide documentation of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under the requirements of this section.

(c) Upon request, an applicant shall provide acceptable proof of a current permit issued by another jurisdiction. Upon request, the applicant shall provide proof that the permitting requirements of that jurisdiction are substantially equivalent to the permitting requirements of this state.

(d) The department's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the requirements of this section.

(e) For an application for a permit submitted by a verified military service member or military veteran, the applicant shall receive credit towards any permitting or apprenticeship requirements, except an examination requirement, for verified military service, training, or education that is relevant to the occupation, unless he or she holds a restricted permit issued by another jurisdiction or if he or she has an unacceptable criminal history as described by the Act and this chapter.

(f) An applicant who is a military spouse who holds a current permit issued by another jurisdiction that has substantially equivalent permitting requirements shall complete and submit an application form and fee. The department shall issue a permit to a qualified applicant who holds such a permit as soon as practicable and the renewal of the permit shall be in accordance with subsection (i) of this section.

(g) In accordance with Occupations Code, §55.004(c), the department may waive any prerequisite to obtaining a permit after reviewing the applicant's credentials and determining that the applicant holds a permit issued by another jurisdiction that has permit requirements substantially equivalent to those of this state.

(h) A military spouse who within the five years preceding the application date held the permit in this state that expired while the applicant lived in another state for at least six months is qualified for a permit based on the previously held permit, if there are no unresolved complaints against the applicant and if there is no other bar to permitting, such as criminal background or non-compliance with a department order.

(i) If the department issues an initial permit to an applicant who is a military spouse in accordance with subsection (f) of this section, the department shall assess whether the applicant has met all permitting requirements of this state by virtue of the current permit issued by another jurisdiction. The department shall provide this assessment in writing to the applicant at the time the permit is issued. If the applicant has not met all permitting requirements of this state, the applicant must provide proof of completion at the time of the first application for permit renewal. A permit shall not be renewed, shall be allowed to expire, and shall become ineffective if the applicant does not provide proof of completion at the time of the first application for permit renewal.

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SUBCHAPTER G. OPTICIANS

25 TAC §140.287

STATUTORY AUTHORITY

The new rule is authorized by Occupations Code, Chapter 55 and §§352.053, 353.005, 403.052, 455.051, 504.051, 601.052, 603.152, 604.052, 781.051, 1952.051, and 1953.051, which authorize the adoption of rules for the licensing and regulation of opticians, contact lens dispensers, dyslexia therapists and practitioners, massage therapists, chemical dependency counselors, medical radiologic technologists, perfusionists, respiratory care practitioners, personal emergency response system providers, code enforcement officers, and sanitarians. The proposed changes are authorized by Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new rule affects Occupations Code, Chapters 55, 352, 353, 403, 455, 504, 601, 603, 604, 781, 1952, and 1953.

§140.287. Registration of Military Service Members, Military Veterans, and Military Spouses.

(a) This section sets out registration procedures for military service members, military veterans, and military spouses required under Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section, the following terms shall have the following meanings:

(1) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(2) Military spouse--A person who is married to a military service member who is currently on active duty.

(3) Military veteran--A person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(b) An applicant shall provide documentation of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to,

copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under the requirements of this section.

(c) Upon request, an applicant shall provide acceptable proof of current registration issued by another jurisdiction. Upon request, the applicant shall provide proof that the registration requirements of that jurisdiction are substantially equivalent to the registration requirements of this state.

(d) The department's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the requirements of this section.

(e) For an application for a registration submitted by a verified military service member or military veteran, the applicant shall receive credit towards any registration or apprenticeship requirements, except an examination requirement, for verified military service, training, or education that is relevant to the occupation, unless he or she holds a restricted registration issued by another jurisdiction or if he or she has an unacceptable criminal history as described by the Act and this chapter.

(f) An applicant who is a military spouse who holds a current registration issued by another jurisdiction that has substantially equivalent registration requirements shall complete and submit an application form and fee. The department shall issue a registration to a qualified applicant who holds such a registration as soon as practicable and the renewal of the registration shall be in accordance with subsection (i) of this section.

(g) In accordance with Occupations Code, §55.004(c), the department may waive any prerequisite to obtaining a registration after reviewing the applicant's credentials and determining that the applicant holds a registration issued by another jurisdiction that has registration requirements substantially equivalent to those of this state.

(h) A military spouse who within the five years preceding the application date held the registration in this state that expired while the applicant lived in another state for at least six months is qualified for registration based on the previously held registration, if there are no unresolved complaints against the applicant and if there is no other bar to registration, such as criminal background or non-compliance with a department order.

(i) If the department issues an initial registration to an applicant who is a military spouse in accordance with subsection (f) of this section, the department shall assess whether the applicant has met all registration requirements of this state by virtue of the current registration issued by another jurisdiction. The department shall provide this assessment in writing to the applicant at the time the registration is issued. If the applicant has not met all registration requirements of this state, the applicant must provide proof of completion at the time of the first application for registration renewal. A registration shall not be renewed, shall be allowed to expire, and shall become ineffective if the applicant does not provide proof of completion at the time of the first application for registration renewal.

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SUBCHAPTER H. MASSAGE THERAPISTS
DIVISION 7. COMPLAINTS, VIOLATIONS AND SUBSEQUENT DISCIPLINARY ACTIONS

25 TAC §140.378

STATUTORY AUTHORITY

The new rule is authorized by Occupations Code, Chapter 55 and §§352.053, 353.005, 403.052, 455.051, 504.051, 601.052, 603.152, 604.052, 781.051, 1952.051, and 1953.051, which authorize the adoption of rules for the licensing and regulation of opticians, contact lens dispensers, dyslexia therapists and practitioners, massage therapists, chemical dependency counselors, medical radiologic technologists, perfusionists, respiratory care practitioners, personal emergency response system providers, code enforcement officers, and sanitarians. The proposed changes are authorized by Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new rule affects Occupations Code, Chapters 55, 352, 353, 403, 455, 504, 601, 603, 604, 781, 1952, and 1953.

§140.378. Licensing of Military Service Members, Military Veterans, and Military Spouses.

(a) This section sets out licensing procedures for military service members, military veterans, and military spouses required under Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section, the following terms shall have the following meanings:

(1) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(2) Military spouse--A person who is married to a military service member who is currently on active duty.

(3) Military veteran--A person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(b) An applicant shall provide documentation of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under the requirements of this section.

(c) Upon request, an applicant shall provide acceptable proof of current licensure issued by another jurisdiction. Upon request, the applicant shall provide proof that the licensing requirements of that

jurisdiction are substantially equivalent to the licensing requirements of this state.

(d) The department's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the requirements of this section.

(e) For an application for a license submitted by a verified military service member or military veteran, the applicant shall receive credit towards any licensing or apprenticeship requirements, except an examination requirement, for verified military service, training, or education that is relevant to the occupation, unless he or she holds a restricted license issued by another jurisdiction or if he or she has an unacceptable criminal history as described by the Act and this chapter.

(f) An applicant who is a military spouse who holds a current license issued by another jurisdiction that has substantially equivalent licensing requirements shall complete and submit an application form and fee. The department shall issue a license to a qualified applicant who holds such a license as soon as practicable and the renewal of the license shall be in accordance with subsection (i) of this section.

(g) In accordance with Occupations Code, §55.004(c), the department may waive any prerequisite to obtaining a license after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

(h) A military spouse who within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months is qualified for licensure based on the previously held license, if there are no unresolved complaints against the applicant and if there is no other bar to licensure, such as criminal background or non-compliance with a department order.

(i) If the department issues an initial license to an applicant who is a military spouse in accordance with subsection (f) of this section, the department shall assess whether the applicant has met all licensing requirements of this state by virtue of the current license issued by another jurisdiction. The department shall provide this assessment in writing to the applicant at the time the license is issued. If the applicant has not met all licensing requirements of this state, the applicant must provide proof of completion at the time of the first application for license renewal. A license shall not be renewed, shall be allowed to expire, and shall become ineffective if the applicant does not provide proof of completion at the time of the first application for licensure renewal.

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SUBCHAPTER I. LICENSED CHEMICAL DEPENDENCY COUNSELORS

25 TAC §140.417, §140.433

STATUTORY AUTHORITY

The amendment and new rule are authorized by Occupations Code, Chapter 55 and §§352.053, 353.005, 403.052, 455.051, 504.051, 601.052, 603.152, 604.052, 781.051, 1952.051, and 1953.051, which authorize the adoption of rules for the licensing and regulation of opticians, contact lens dispensers, dyslexia therapists and practitioners, massage therapists, chemical dependency counselors, medical radiologic technologists, perfusionists, respiratory care practitioners, personal emergency response system providers, code enforcement officers, and sanitarians. The proposed changes are authorized by Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment and new rule affect Occupations Code, Chapters 55, 352, 353, 403, 455, 504, 601, 603, 604, 781, 1952, and 1953.

§140.417. Renewal of License by Active Military Members [~~and Military Spouses~~].

[~~(a)~~] If an LCDC, CI, or CCS fails to timely renew his or her license because the licensee is called to or is on active duty with the armed forces of the United States, or ordered by proper authority to active duty, outside the state of Texas, the licensee or the licensee's authorized representative may request an additional amount of time, equal to the total amount of time on active duty, for the licensee to complete any continuing education or other renewal requirements. A written request for an extension of time to complete renewal requirements under this section must be received by the department by no later than 60 days after the licensee is discharged from active duty, but, whenever possible, shall be submitted before the commencement of active duty or the scheduled expiration of the applicable license.

(1) If the request is made by the licensee's authorized representative, the request shall include a copy of the appropriate power of attorney or written evidence of a spousal relationship.

(2) The written request shall include a copy of the official transfer orders of the licensee or other official military documentation showing that the licensee is called to or on active duty. The licensee shall also provide documentation of the date of discharge from active duty, either with the written request or upon discharge, whichever is later.

(3) If a timely request is made in accordance with this section, the department will exempt the licensee from payment of the late renewal fee.

(4) The written request shall include a current address and telephone number for the licensee or the licensee's authorized representative.

(5) A person eligible for an extension of time to complete renewal requirements under this section for a license issued under this subchapter may not provide services to which the applicable license under this subchapter applies after the regularly scheduled expiration of that person's license until such time, if any, as the licensee completes renewal of the license in accordance with this subsection.

[(b) The spouse of a person serving on active duty as a member of the armed forces of the United States who within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months is qualified for licensure based on the previously held license, if another basis for denial does not otherwise exist under §140.426 of this title (relating to Disciplinary Actions) or §140.431 of this title (relating to Criminal History Standards).]

[(c) The spouse of a person serving on active duty as a member of the armed forces of the United States who holds a current license or certification to practice chemical dependency counseling in another state that has substantially equivalent licensing requirements may apply for licensure as an LCDC in accordance with §140.414 of this title (relating to LCDC Licensure Through Reciprocity).]

§140.433. Licensing, Certification, or Registration of Military Service Members, Military Veterans, and Military Spouses.

(a) This section sets out licensing, certification, and registration procedures for military service members, military veterans, and military spouses required under Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section, the following terms shall have the following meanings:

(1) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(2) Military spouse--A person who is married to a military service member who is currently on active duty.

(3) Military veteran--A person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(b) An applicant shall provide documentation of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under the requirements of this section.

(c) Upon request, an applicant shall provide acceptable proof of current licensure, certification, or registration issued by another jurisdiction. Upon request, the applicant shall provide proof that the licensing, certification, or registration requirements of that jurisdiction are substantially equivalent to the licensing, certification, or registration requirements of this state.

(d) The department's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the requirements of this section.

(e) For an application for a license, certificate, or registration submitted by a verified military service member or military veteran, the applicant shall receive credit towards any licensing, certification, registration or internship requirements, except an examination requirement, for verified military service, training, or education that is relevant to the occupation, unless he or she holds a restricted license, certificate, or registration issued by another jurisdiction or if he or she has an unacceptable criminal history as described by the Act and this chapter.

(f) An applicant who is a military spouse who holds a current license, certificate, or registration issued by another jurisdiction that has substantially equivalent licensing, certification, or registration requirements shall complete and submit an application form and fee. The department shall issue a license, certificate, or registration to a qualified applicant who holds such a license as soon as practicable and the renewal of the license, certificate, or registration shall be in accordance with subsection (i) of this section.

(g) In accordance with Occupations Code, §55.004(c), the department may waive any prerequisite to obtaining a license, certificate, or registration after reviewing the applicant's credentials and determining that the applicant holds a license, certificate, or registration issued by another jurisdiction that has licensing, certification, or registration requirements substantially equivalent to those of this state.

(h) A military spouse who within the five years preceding the application date held the license, certificate, or registration in this state that expired while the applicant lived in another state for at least six months is qualified for licensure, certification, or registration based on the previously held license, certificate, or registration, if there are no unresolved complaints against the applicant and if there is no other bar to licensure, certification, or registration, such as criminal background or non-compliance with a department order.

(i) If the department issues an initial license, certificate, or registration to an applicant who is a military spouse in accordance with subsection (f) of this section, the department shall assess whether the applicant has met all licensing, certification, or registration requirements of this state by virtue of the current license, certificate, or registration issued by another jurisdiction. The department shall provide this assessment in writing to the applicant at the time the license, certificate, or registration is issued. If the applicant has not met all licensing, certification, or registration requirements of this state, the applicant must provide proof of completion at the time of the first application for license, certificate, or registration renewal. A license, certificate, or registration shall not be renewed, shall be allowed to expire, and shall become ineffective if the applicant does not provide proof of completion at the time of the first application for licensure renewal.

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SUBCHAPTER J. MEDICAL RADIOLOGIC TECHNOLOGISTS

25 TAC §§140.501, 140.502, 140.524

STATUTORY AUTHORITY

The amendments and new rule are authorized by Occupations Code, Chapter 55 and §§352.053, 353.005, 403.052, 455.051, 504.051, 601.052, 603.152, 604.052, 781.051, 1952.051, and 1953.051, which authorize the adoption of rules for the licensing and regulation of opticians, contact lens dispensers, dyslexia therapists and practitioners, massage therapists, chemical dependency counselors, medical radiologic technologists,

perfusionists, respiratory care practitioners, personal emergency response system providers, code enforcement officers, and sanitarians. The proposed changes are authorized by Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendments and new rule affect Occupations Code, Chapters 55, 352, 353, 403, 455, 504, 601, 603, 604, 781, 1952, and 1953.

§140.501. Purpose and Scope.

(a) (No change.)

(b) Scope. These sections cover definitions; [~~the Medical Radiologic Technologist Advisory Committee;~~] fees; applicability of subchapter; exemptions; application requirements and procedures for examination and certification; types of certificates and eligibility; examinations; standards for curricula and instructor approval; certificate renewal; continuing education requirements; changes of name and address; certifying persons with criminal backgrounds to be medical radiologic technologists; disciplinary actions; alternate eligibility requirements; dangerous or hazardous procedures; mandatory training programs for non-certified technicians; registry of non-certified technicians; hardship exemptions; and alternate training requirements.

§140.502. Definitions.

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

(1) - (7) (No change.)

[~~(8) Committee--The Medical Radiologic Technologist Advisory Committee.~~]

(8) [~~(9)~~] Dentist--A person licensed by the Texas State Board of Dental Examiners to practice dentistry.

(9) [~~(10)~~] Department--The Department of State Health Services.

(10) [~~(11)~~] Direct supervision--A practitioner must be physically present and immediately available.

(11) [~~(12)~~] Federally qualified health center (FQHC)--A health center as defined by 42 United States Code, §1396d(2)(B).

(12) [~~(13)~~] Fluoroscopy--The practice of examining tissues using a fluorescent screen, including digital and conventional methods.

(13) [~~(14)~~] Fluorography--Hard copy of a fluoroscopic image; also known as spot films.

(14) [~~(15)~~] General certification--An authorization to perform radiologic procedures.

(15) [~~(16)~~] Instructor--An individual approved by the department to provide instruction and training in the discipline of medical radiologic technology in an educational setting.

(16) [~~(17)~~] Limited certification--An authorization to perform radiologic procedures that are limited to specific parts of the human body.

(17) [~~(18)~~] Limited medical radiologic technologist (LMRT)--A person who holds a limited certificate issued under the Act, and who under the direction of a practitioner, intentionally administers radiation to specific parts of the bodies of other persons for medical reasons. The limited categories are the skull, chest, spine, extremities, podiatric, chiropractic and cardiovascular.

(18) [~~(19)~~] Medical radiologic technologist (MRT)--A person who holds a general certificate issued under the Act, and who, under the direction of a practitioner, intentionally administers radiation to other persons for medical reasons.

(19) [~~(20)~~] Mobile service operation--The provision of radiation machines and personnel at temporary sites for limited time periods. The radiation machines may be fixed inside a motorized vehicle or may be a portable radiation machine that may be removed from the vehicle and taken into a facility for use.

(20) [~~(21)~~] NMTCB--Nuclear Medicine Technology Certification Board and its successor organizations.

(21) [~~(22)~~] Non-Certified Technician (NCT)--A person who has completed a training program and who is listed in the registry. An NCT may not perform a radiologic procedure which has been identified as dangerous or hazardous.

(22) [~~(23)~~] Pediatric--A person within the age range of fetus to age 18 or otherwise required by Texas law, when the growth and developmental processes are generally complete. These rules do not prohibit a practitioner taking into account the individual circumstances of each patient and determining if the upper age limit requires variation by not more than two years.

(23) [~~(24)~~] Physician--A person licensed by the Texas Medical Board to practice medicine.

(24) [~~(25)~~] Physician assistant--A person licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners.

(25) [~~(26)~~] Podiatrist--A person licensed by the Texas State Board of Medical Podiatric Examiners to practice podiatry.

(26) [~~(27)~~] Practitioner--A doctor of medicine, osteopathy, podiatry, dentistry, or chiropractic who is licensed under the laws of this state and who prescribes radiologic procedures for other persons for medical reasons.

(27) [~~(28)~~] Provisional medical radiologic technologist (PMRT)--An authorization to perform radiologic procedures not to exceed 180 days for individuals currently licensed or certified in another jurisdiction.

(28) [~~(29)~~] Radiation--Ionizing radiation in addition to beyond normal background levels from sources such as medical and dental radiologic procedures.

(29) [~~(30)~~] Radiologic procedure--Any procedure or article intended for use in the diagnosis of disease or other medical or dental conditions in humans (including diagnostic x-rays or nuclear medicine procedures) or the cure, mitigation, treatment, or prevention of disease in humans that achieves its intended purpose through the emission of ionizing radiation.

(30) [~~(31)~~] Registered nurse--A person licensed by the Texas Board of Nursing to practice professional nursing.

(31) [~~(32)~~] Registry--A list of names and other identifying information of non-certified technicians.

(32) [~~(33)~~] Sponsoring institution--A hospital, educational, or other facility, or a division thereof, that offers or intends to offer a course of study in medical radiologic technology.

(33) [~~(34)~~] Supervision--Responsibility for and control of quality, radiation safety and protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic and/or therapeutic purposes.

(34) [~~(35)~~] Temporary certification, general or limited--An authorization to perform radiologic procedures for a limited period, not to exceed one year.

(35) [~~(36)~~] TRCR--Texas Regulations for Control of Radiation, 25 Texas Administrative Code, Chapter 289. The regulations are available from Radiation Control, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189, phone 1-512-834-6688 or at www.dshs.state.tx.us/radiation.

(36) [~~(37)~~] X-ray equipment--An x-ray system, subsystem, or component thereof. For the purposes of this rule, types of x-ray equipment are as follows:

(A) portable x-ray equipment--x-ray equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled. Portable x-ray equipment may also include equipment designed to be hand-carried;

(B) stationary x-ray equipment--x-ray equipment that is installed in a fixed location; or

(C) mobile stationary x-ray equipment--x-ray equipment that is permanently affixed to a motor vehicle or trailer with appropriate shielding.

§140.524. Certifying of Military Service Members, Military Veterans, and Military Spouses.

(a) This section sets out certifying procedures for military service members, military veterans, and military spouses required under Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section, the following terms shall have the following meanings:

(1) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(2) Military spouse--A person who is married to a military service member who is currently on active duty.

(3) Military veteran--A person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(b) An applicant shall provide documentation of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under the requirements of this section.

(c) Upon request, an applicant shall provide acceptable proof of current certification issued by another jurisdiction. Upon request, the applicant shall provide proof that the certification requirements of that jurisdiction are substantially equivalent to the certification requirements of this state.

(d) The department's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the requirements of this section.

(e) For an application for a certificate submitted by a verified military service member or military veteran, the applicant shall receive credit towards any certification or apprenticeship requirements, except an examination requirement, for verified military service, training, or education that is relevant to the occupation, unless he or she holds a restricted certificate issued by another jurisdiction or if he or she has an unacceptable criminal history as described by the Act and this chapter.

(f) An applicant who is a military spouse who holds a current certificate issued by another jurisdiction that has substantially equivalent certification requirements shall complete and submit an application form and fee. The department shall issue a certificate to a qualified applicant who holds such a certificate as soon as practicable and the renewal of the certificate shall be in accordance with subsection (i) of this section.

(g) In accordance with Occupations Code, §55.004(c), the program director may waive any prerequisite to obtaining a certificate after reviewing the applicant's credentials and determining that the applicant holds a certificate issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

(h) A military spouse who within the five years preceding the application date held the certificate in this state that expired while the applicant lived in another state for at least six months is qualified for certification based on the previously held certificate, if there are no unresolved complaints against the applicant and if there is no other bar to certification, such as criminal background or non-compliance with a department order.

(i) If the department issues an initial certificate to an applicant who is a military spouse in accordance with subsection (f) of this section, the department shall assess whether the applicant has met all certification requirements of this state by virtue of the current certificate issued by another jurisdiction. The department shall provide this assessment in writing to the applicant at the time the certificate is issued. If the applicant has not met all certification requirements of this state, the applicant must provide proof of completion at the time of the first application for certificate renewal. A certificate shall not be renewed, shall be allowed to expire, and shall become ineffective if the applicant does not provide proof of completion at the time of the first application for certification renewal.

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, 2014.

TRD-201404215
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: October 19, 2014
For further information, please call: (512) 776-6972

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25 TAC §140.503

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of State Health Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is authorized by Occupations Code, Chapter 55 and §§352.053, 353.005, 403.052, 455.051, 504.051, 601.052, 603.152, 604.052, 781.051, 1952.051, and 1953.051, which authorize the adoption of rules for the licensing and regulation of opticians, contact lens dispensers, dyslexia therapists and practitioners, massage therapists, chemical dependency counselors, medical radiologic technologists, perfusionists, respiratory care practitioners, personal emergency response system providers, code enforcement officers, and sanitarians. The proposed changes are authorized by Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The repeal affects Occupations Code, Chapters 55, 352, 353, 403, 455, 504, 601, 603, 604, 781, 1952, and 1953.

§140.503. Medical Radiologic Technologist Advisory Committee.

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

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SUBCHAPTER K. DYSLEXIA THERAPISTS AND DYSLEXIA PRACTITIONERS

25 TAC §140.579, §140.596

STATUTORY AUTHORITY

The amendment and new rule are authorized by Occupations Code, Chapter 55 and §§352.053, 353.005, 403.052, 455.051, 504.051, 601.052, 603.152, 604.052, 781.051, 1952.051, and 1953.051, which authorize the adoption of rules for the licensing and regulation of opticians, contact lens dispensers, dyslexia therapists and practitioners, massage therapists, chemical dependency counselors, medical radiologic technologists, perfusionists, respiratory care practitioners, personal emergency response system providers, code enforcement officers, and sanitarians. The proposed changes are authorized by Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment and new rule affect Occupations Code, Chapters 55, 352, 353, 403, 455, 504, 601, 603, 604, 781, 1952, and 1953.

§140.579. Dyslexia Licensing Advisory Committee.

(a) - (d) (No change.)

(e) Review. The [~~and duration. By September 1, 2013, the~~] department will periodically initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. [~~If the committee is not continued or consolidated, the committee shall be abolished on that date.~~]

(f) - (o) (No change.)

§140.596. Licensing of Military Service Members, Military Veterans, and Military Spouses.

(a) This section sets out licensing procedures for military service members, military veterans, and military spouses required under Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section, the following terms shall have the following meanings:

(1) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(2) Military spouse--A person who is married to a military service member who is currently on active duty.

(3) Military veteran--A person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(b) An applicant shall provide documentation of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under the requirements of this section.

(c) Upon request, an applicant shall provide acceptable proof of current licensure issued by another jurisdiction. Upon request, the applicant shall provide proof that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of this state.

(d) The department's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the requirements of this section.

(e) For an application for a license submitted by a verified military service member or military veteran, the applicant shall receive credit towards any licensing or apprenticeship requirements, except an examination requirement, for verified military service, training, or education that is relevant to the occupation, unless he or she holds a restricted license issued by another jurisdiction or if he or she has an unacceptable criminal history as described by the Act and this chapter.

(f) An applicant who is a military spouse who holds a current license issued by another jurisdiction that has substantially equivalent licensing requirements shall complete and submit an application form and fee. The department shall issue a license to a qualified applicant who holds such a license as soon as practicable and the renewal of the license shall be in accordance with subsection (i) of this section.

(g) In accordance with Occupations Code, §55.004(c), the department may waive any prerequisite to obtaining a license after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

(h) A military spouse who within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months is qualified for licensure based on the previously held license, if there are no unresolved complaints against the applicant and if there is no other bar to licensure, such as criminal background or non-compliance with a department order.

(i) If the department issues an initial license to an applicant who is a military spouse in accordance with subsection (f) of this section, the department shall assess whether the applicant has met all licensing requirements of this state by virtue of the current license issued by another jurisdiction. The department shall provide this assessment in writing to the applicant at the time the license is issued. If the applicant has not met all licensing requirements of this state, the applicant must provide proof of completion at the time of the first application for license renewal. A license shall not be renewed, shall be allowed to expire, and shall become ineffective if the applicant does not provide proof of completion at the time of the first application for licensure renewal.

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

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

28 TAC §7.18, §7.85

The Texas Department of Insurance proposes amendments to 28 TAC §7.18 and §7.85, concerning the National Association of Insurance Commissioners Accounting Practices and Procedures Manual. The proposed amendments to §7.18 establish a priority of sources for the commissioner, insurers, and health maintenance organizations (HMOs) to use when determining the proper accounting treatment for insurance or health plan transactions that will continue from year to year without further action of the commissioner. The proposed amendments to §7.85 make nonsubstantive updates to Insurance Code and Administrative Code citations.

Consistent with prior versions of §7.18, the sources are: (1) Texas statutes; (2) department rules; (3) directives, instructions, and orders of the commissioner; (4) except as provided in the exceptions and modifications set out in subsections (c) and (d) of this section, the National Association of Insurance Commissioners' (NAIC) *Accounting Practices and Procedures Manual* (manual); (5) other NAIC handbooks, manuals, and instructions adopted by the department; and (6) Generally Accepted Accounting Practices.

Section 7.18 establishes these sources for use on a continuous basis without the necessity of further action by the commissioner, including amendments to this section. This differs from the department's historical process of periodically adopting the current version of the NAIC manual and all subsequent changes to the prior year's manual by reference. That process has proved cumbersome and untimely because final subsequent changes are often not adopted until late December, making it impossible to adopt the changes in time for reports that insurers must file annually on or before March 1.

The department also considers the adoption by reference process unnecessary because, under existing rules and this proposal, the commissioner reserves all authority and discretion to resolve any issues in Texas concerning the proper accounting treatment for an insurance or health plan transaction. The sources of information that the commissioner will use to make these determinations does not change. This proposal states the priority of the sources the commissioner will use to make the determinations and provides insurers and health maintenance organizations (collectively referred to as "carriers") with that information to timely and accurately record their transactions and to complete and file their reports.

In establishing these sources, the commissioner has not delegated authority to others. Except for statute, each source is subject to the commissioner's jurisdiction to amend the guidance on how to properly record business transactions for accurate statutory reporting and for preparing all financial statements filed with the department. Even without direct amendments in this section, as provided in §7.18(c) and (d), the authority to establish sources and determine their effect is vested in statute or the commissioner.

The procedure for amending a source will depend on the circumstance, provision involved, and timing. As addressed in §7.18(a)(2) and (3), the commissioner may propose rules or issue orders. Under existing law, interested persons may petition the commissioner for rules or otherwise bring to the commissioner's attention the need for action to address a problem, including requesting a permitted practice deviation under §7.18(f).

The manual incorporates the statements of statutory accounting principles (SSAPs) that are developed by regulators with input from the insurance industry. The SSAPs provide a national standard for carriers to determine how to properly record business transactions for statutory reporting. The SSAPs are adopted by regulators through a deliberative process, which includes a series of open meetings that offer the public the opportunity to comment on the proposed SSAPs. The manual is published annually by the NAIC to reflect any changes to the SSAPs made through this process.

Like the other sources of information listed in §7.18(a), the department uses the manual, including its appendices, as the source of statutory accounting principles and actuarial guidelines when analyzing financial reports, conducting statutory examinations, and determining rehabilitations of carriers licensed in Texas, unless a department rule or other state law provides otherwise.

The current manual is NAIC's 2014 *Accounting Practices and Procedures Manual.* The 2014 manual is the current source of SSAP information for the commissioner, insurers, and HMOs to use when determining the proper accounting treatment for an insurance or health plan transaction for filings made and examinations dated on or after December 31, 2013, pending its subsequent amendment or the adoption of a new manual. Interested persons may comment on potential issues with the 2014 manual under this proposal.

The manual is available for purchase from the NAIC. The March 2014 manual is available for inspection in the Financial Regulation Division of the Texas Department of Insurance, William P. Hobby Jr. State Office Building, Tower Number III, Third Floor, 333 Guadalupe, Austin, Texas. Under the proposal, the department will make available for public inspection, a copy of the current manual and any substantive and nonsubstantive amendments that have been adopted since the publication of the last manual.

The following is a summary of the amendments. Section 7.18(a) has been amended to establish the priority of the sources of information. The subsection retains the priority schedule for determining the proper accounting treatment for an insurance or health plan transaction, and this section provides guidance on how to properly record business transactions for accurate statutory reporting and for preparing all financial statements filed with the department. Section 7.18(b) establishes the requirement to use the manual as it may be amended from time to time.

Section 7.18(c) maintains the existing modifications and exceptions to the manual. Section 7.18(d) maintains existing exemptions from the manual for a farm mutual insurance company, statewide mutual assessment company, local mutual aid association, or mutual burial association that has less than $6 million in annual direct written premiums. Section 7.18(e) lists the existing series of rules that are known to preempt the manual. Section 7.18(f) incorporates an existing department practice and clarifies that HMOs may request a permitted practice to deviate from the required accounting practices in the same manner as insurers.

The amendments to §7.85 make nonsubstantive updates to references to §7.18 and statutory citations. The department has also made nonsubstantive changes in the text to reflect department style guidelines in both §7.18 and §7.85.

FISCAL NOTE. Danny Saenz, deputy commissioner of the Financial Regulation Division, has determined that, for each of the first five years the amended sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administrating the amended sections, and there will be no effect on local employment or the local economy.

PUBLIC BENEFIT/COST NOTE. Mr. Saenz also has determined that for each of the first five years the amended sections are in effect, the public benefit of the amendments to §7.18 will be greater certainty in the applicable statutory accounting standards when preparing and filing reports, especially for carriers that are required to comply with accounting requirements in multiple states. The continuous nature of the amended section will also enhance the department's ability to continue efficient financial solvency regulation of insurance in general and avoid the use of its resources to engage in unnecessary rulemaking. The amendments to §7.85 will assist the public in being able to more easily relate the rule to the current applicable statutes.

The department anticipates that amending §7.18 to establish a continuous priority of sources for determining the proper accounting treatment for an insurance or health plan transaction will not result in additional costs to those already required of carriers, regardless of size, under the existing statutes and rules. Insurers were required to use the current year's manual and all subsequent changes to the version under the current rule, which is available for purchase from the NAIC. The department also anticipates that amending §7.85 will not result in additional costs to those already required of carriers, regardless of size, under the existing statutes and rules.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Under Government Code §2006.002, the department has determined that the proposed amendments will not result in any additional costs to those already required of small and micro business carriers under the existing statutes and rules.

Under Government Code §2006.002(c), before adopting a rule that may have an adverse economic effect on small or micro businesses, an agency is required to prepare, in addition to an economic impact statement, a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. The proposal continues the exemption from compliance with the manual in §7.18(d) for a farm mutual insurance company, statewide mutual assessment company, local mutual aid association, or mutual burial association with less than $6 million in annual direct written premiums. Because of the kinds of operations of these types of carriers, they are more likely to be small or micro business carriers. The department bases the exemption on its current application and the fact that these carriers as a class have historically posed relatively insubstantial insolvency-related risk to consumers, other carriers, and the state's general economic welfare.

The department has determined that for other carriers, the routine costs to comply with §7.18 will not have an adverse economic effect on small or micro business carriers. The department has also proposed the means for these carriers to seek an exception from the accounting guidance, either through application for a rule or a permitted practice deviation under §7.18(f). The amendments to §7.85 do not create new requirements from existing rules that would adversely affect a small or micro business. Therefore, the department is not required to consider alternative methods of achieving the purpose of these requirements in the proposed rule as required by Government Code §2006.002(c).

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

REQUEST FOR PUBLIC COMMENT. To be considered, submit written comments on the proposal no later than 5:00 p.m., Central time, on October 20, 2014. All comments should be submitted to the chief clerk by email at chiefclerk@tdi.texas.gov or by mail to Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of your comments by email to Danny Saenz at danny.saenz@tdi.texas.gov or by mail to Danny Saenz, Deputy Commissioner, Financial Regulation Division, Texas Department of Insurance, Mail Code 305-2A, P.O. Box 149104, Austin, Texas 78714-9104.

If you want to request a public hearing on the proposal, you must submit the request separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, attendees may present written comments and public testimony at the hearing.

STATUTORY AUTHORITY. The department proposes the amendments to §7.18 under Insurance Code Chapters 32, 401, 404, 421, 425, 426, 441, 802, 823, 841, 843, 861, and 862, and §36.001. The department proposes the amendments to §7.85 under Insurance Code §401.009 and §36.001.

Section 32.041 requires the department to furnish to the companies the required financial statement forms. Sections 401.051 and 401.056 mandate that the department examine the financial condition of each carrier organized under the laws of Texas or authorized to transact the business of insurance in Texas, and adopt by rule procedures for the filing and adoption of examination reports. Section 404.005(a)(2) authorizes the commissioner to establish standards for evaluating the financial condition of an insurer.

Section 421.001(c) requires the commissioner to adopt each current formula recommended by the NAIC for establishing reserves for each line of insurance. Section 425.162 authorizes the commissioner to adopt rules, minimum standards, or limitations that are fair and reasonable as appropriate to supplement and implement Insurance Code Chapter 425, Subchapter C. Section 426.002 provides that reserves required by §426.001 must be computed in accord with any rules adopted by the commissioner to adequately protect insureds, secure the solvency of the workers' compensation insurance company, and prevent unreasonably large reserves.

Section 441.005 authorizes the commissioner to adopt reasonable rules as necessary to implement and supplement Insurance Code Chapter 441. Section 802.001 authorizes the commissioner to obtain an accurate indication of the company's condition and method of transacting business, as necessary, to change the form of any annual statement required to be filed by any kind of insurance company. Section 823.012 authorizes the commissioner to issue rules and orders necessary to implement the provisions of Insurance Code Chapter 823.

Section 843.151 authorizes the commissioner to promulgate rules that are necessary and proper to implement the provisions of Insurance Code Chapter 843. Section 843.155 requires HMOs to file annual reports with the commissioner, including a financial statement of the HMO, certified by an independent public accountant.

Section 401.009 authorizes the commissioner to adopt rules governing the information to be included in the audited financial report under Insurance Code §401.009(a)(3)(H). Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The proposed amendments to §7.18 affect the following statutes: Insurance Code §§32.041, 401.051, 401.056, 404.005(a)(2), 421.001(c), 425.162, 426.002, 441.005, 802.001, 823.012, 843.151, and 843.155.

The proposed amendments to §7.85 affect Insurance Code §401.009.

§7.18. National Association of Insurance Commissioners Accounting Practices and Procedures Manual.

(a) [~~The purpose of this section is to adopt statutory accounting principles, which will provide insurers and health maintenance organizations, including accountants employed or retained by these entities, guidance as how to properly record business transactions for the purpose of accurate statutory reporting. The March 2012 version of the Accounting Practices and Procedures Manual (Manual) published by the National Association of Insurance Commissioners (NAIC), with the exceptions and modifications set forth in subsections (c) and (d) of this section, will be utilized as the guideline for statutory accounting principles in Texas to the extent the Manual does not conflict with provisions of the Insurance Code or rules of the department.~~] The commissioner reserves all authority and discretion to resolve any [~~accounting~~] issues in Texas concerning the proper accounting treatment for an insurance or health plan transaction. When determining the proper accounting treatment for an insurance or health plan transaction, the commissioner, insurers, and health maintenance organizations will refer to the sources in paragraphs (1) - (6) of this subsection in the respective order of priority listed for guidance on how to properly record business transactions for the purpose of accurate statutory reporting and for preparing all financial statements filed with the department. The sources in paragraphs (1) - (3) of this subsection preempt any contrary provisions in the National Association of Insurance Commissioners' (NAIC) *Accounting Practices and Procedures Manual* (manual). [~~Manual. The department rules preempting any contrary provisions in the Manual, include, but are not limited to: §§3.1501 - 3.1505, 3.1601 - 3.1608, 3.4505(f), 3.6101, 3.6102, 3.7001 - 3.7009, 3.9101 - 3.9106, 3.9401 - 3.9404, 7.7, 7.85, and 11.803 of this title (relating to Annuity Mortality Tables; Actuarial Opinion and Memorandum Regulation; General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves; Policy Reserves; Claims Reserves; Minimum Reserve Standards for Individual and Group Accident and Health Insurance; the 2001 CSO Mortality Table; Preferred Mortality Tables; Subordinated Indebtedness, Surplus Debentures, Surplus Notes, Premium Income Notes, Bonds, or Debentures, and Other Contingent Evidences of Indebtedness; Audited Financial Reports; and Investments, Loans, and Other Assets).~~]

(1) Texas statutes;

(2) department rules;

(3) directives, instructions, and orders of the commissioner;

(4) except as provided in with the exceptions, modifications, and exemptions set forth in subsections (c) and (d) of this section, the manual [~~Manual~~];

(5) other NAIC handbooks, manuals, and instructions[~~,~~] adopted by the department; and

(6) Generally Accepted Accounting Practices.

(b) The manual described in subsection (a)(4) of this section includes the manual as amended from time to time, and all the substantive and nonsubstantive changes to the manual that have been adopted since its last publication. The department will maintain for public inspection at its offices a copy of the current manual and all substantive and nonsubstaintive changes that have been adopted since the last publication. [~~commissioner adopts by reference the March 2012 version of the Manual, with the exceptions and modifications set forth in subsections (c) and (d) of this section, as the source of accounting principles for the department when analyzing financial reports and for conducting statutory examinations and rehabilitations of insurers and health maintenance organizations licensed in Texas, except where otherwise provided by law. This Manual that is adopted by reference with the ex-~~

ceptions and modifications specified in subsections (c) and (d) of this section will be applied to examinations conducted as of December 31, 2011, and thereafter, and also must be used to prepare all financial statements filed with the department for reporting periods beginning on or after December 31, 2011.]

(c) The commissioner adopts the following [adopted] exceptions and modifications to the manual: [under this subsection must be used to prepare all financial statements required to be filed with the department on or after January 1, 2013, and will be applied to all examinations of those financial statements.]

[(1) The commissioner adopts by reference the following modifications to the Manual:]

[(A) Statement of Statutory Accounting Principles (SSAP) Nos. 92, 102, 103, and 104 adopted by the NAIC in calendar year 2012.]

[(B) Placements revisions to nullify SSAP No. 77 and include real estate sales guidance, related effective dates, and adopted Generally Accepted Accounting Principles references in SSAP No. 40.]

[(C) The following modifications made by the NAIC in calendar year 2012 to SSAP Nos. 1, 11, 26, 27, 36, 35R, 48, 57, 68, 90, 95, 97, and 101 QA - Clean and 101 QA - Tracked, that do not modify the intent of those or any other SSAP Numbers.]

[(i) Ref. No. 2004-27: Fund Demand Disclosures for Institutional Business;]

[(ii) Ref. No. 2011-19: ASU 2010-11: Derivatives and Hedging (Topic 815) - Scope Exception Related to Embedded Credit Derivatives;

[(iii) Ref. No. 2011-25: ASU 2011-02, Receivables - A Creditors' Determination of Whether a Restructuring is a Troubled Debt Restructuring;]

[(iv) Ref. No. 2011-38: ASU 2011-06, Fees Paid to the Federal Government by Health Insurers;]

[(v) Ref. No. 201142: SSAP No.1 Implementation Guide;]

[(vi) Ref. No. 2012-01: EITF 06-2: Accounting for Sabbatical Leave and Other Similar Benefits Pursuant to FAS No. 43;]

[(vii) Ref. No. 2012-02: EITF 07-1, Accounting for Collaborative Arrangements;]

[(viii) Ref. No. 2012-03: Clarifications to SSAP No. 57-Title Insurance;]

[(ix) Ref. No. 2012-05: Clarification on the Amortization of the Basis Difference;]

[(x) Ref. No. 2012-07: Adopt EAIW Proposed Revisions to SSAPs - 2000 INTs;]

[(xi) Ref. No. 2012-08: Paragraph Placement in SSAP No. 86;

[(xii) Ref. No. 2012-09: Move Guidance from SSAP No. 95 and Incorporate into SSAP No. 90;]

[(xiii) Ref. No. 2012-12: Credit for Reinsurance;]

[(xiv) Ref. No. 2012-13: Reference to Credit Tenant Loans within SSAP No. 26;]

[(xv) Ref. No. 2012-21: Adopt EAIWG Proposed Revisions to SSAPs - 2001 INTs;]

[(D) Actuarial Guideline 38 adopted by the NAIC in calendar year 2012.]

[(2) In addition, the following exceptions and additions are adopted:]

(1) [(A)] Settlement requirements for intercompany transactions are subject to the accounting treatment in Statement of Statutory Accounting Principles (SSAP) No. 25 (previously SSAP No. 96 located in Appendix H), except that amounts owed to the reporting entity must be settled by the due date in accord with the written agreement and the requirements of §7.204 of this title [(relating to Commissioner's Approval Required)]. Intercompany balances must be settled within 90 days of the period for which the amounts are being billed or[; otherwise] the balances will be nonadmitted.

(2) [(B)] Electronic machines, constituting a data processing system or systems, and operating systems software used in connection with the business of an insurance company acquired after December 31, 2000, may be [an] admitted assets [asset] as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law and must be amortized as provided by the manual [Manual].

(3) [(C)] Furniture, labor-saving devices, machines, and all other office equipment may be admitted as assets [an asset] as permitted by [the] Insurance Code §§841.004, 861.255, 862.001, and any other applicable law and, for property acquired after December 31, 2000, depreciated in full over a period not to exceed five years.

(d) A farm mutual insurance company, statewide mutual assessment company, local mutual aid association, or mutual burial association that has less than $6 million in annual direct written premiums is [need] not required to comply with the manual [Manual].

(e) Preemptions.

(1) Insurance Code provisions preempting any contrary provisions in the manual include: §§2551.251 - 2551.261 and 3503.202.

(2) Department rules preempting any contrary provisions in the manual include: §§3.1501 - 3.1505, 3.1601 - 3.1608, 3.4505(f), 3.6101, 3.6102, 3.7001 - 3.7009, 3.9101 - 3.9106, 3.9401 - 3.9404, 7.7, 7.85, and 11.803 of this title.

(f) [(e)] In the event a domestic insurer or health maintenance organization desires to deviate from the accounting guidance in a Texas statute or any applicable regulation, the insurer or health maintenance organization must file a written request for a permitted accounting practice and obtain approval prior to using the accounting deviation in a financial statement. The filing must be sent to: Deputy Commissioner, [made with the deputy commissioner of the] Financial Regulation Division, Texas Department of Insurance, Mail Code 305-2A, P.O. Box 149104, Austin, Texas 78714-9104 at least 30 days before filing the financial statement that would [is proposed to] be affected by the deviated accounting practice. A domestic insurer or health maintenance organization [Insurers] must not use a deviated accounting practice without the department's prior approval.

(g) [(f)] This section must [shall] not be construed to either broaden or restrict the authority provided under the Insurance Code to insurers or[, including] health maintenance organizations.

§7.85. Audited Financial Reports.

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

(1) Accountant--An independent certified public accountant or accounting firm that meets the requirements of Insurance Code §401.014[~~, Article 1.15A, §12~~].

(2) Audited Financial Report--The annual audit report required by Insurance Code Chapter 401, Subchapter A[~~, Article 1.15A~~].

(3) Commissioner--The commissioner of insurance. [~~Commissioner of Insurance.~~]

(4) Department--The Texas Department [~~department~~] of Insurance.

(5) Examiner--Staff appointed by the commissioner under [~~Commissioner pursuant to~~] Insurance Code Chapter 401, Subchapter C[~~, Articles 1.17 and 1.18~~].

[~~(6) Generally Accepted Accounting Principles (GAAP)--The conventions, rules, and procedures that define accepted accounting practice, including broad guidelines and detailed procedures, set forth by the Accounting Principles Board of the American Institute of Certified Public Accountants, which was superseded by the Financial Accounting Standards Board, and which principles are specifically defined by SAS Number 69 (AU §411.05)~~]

(6) [~~(7)~~] Generally Accepted Auditing Standards (GAAS)--The standards adopted by the American Institute of Certified Public Accountants or Public Company Accounting Oversight Board to conduct an audit and to ensure the quality of the performance by accountants who are engaged in an audit of financial statements.

(7) Material--As defined in the NAIC's *Accounting Practices and Procedures Manual* under §7.18 of this title.

(8) NAIC--The National Association of Insurance Commissioners.

(9) Statutory Examination--An examination performed by the department's examiners or other persons or firms retained by the department specifically for examination of insurers, corporations, or associations.

(10) Work Papers--The records kept by the accountant supporting that accountant's audit opinion, including the audit records and [~~defined by Insurance Code, Article 1.15A, §17(a);~~] the accountant's audit planning records; and any record of communications related to the audit between the accountant and the insurer under [~~pursuant to the~~] Insurance Code §401.020[~~, Article 1.15A, §17(b)~~].

[~~(11) Material--As defined in the NAIC Accounting Practices and Procedures Manual adopted in §7.18 of this title (relating to NAIC Accounting Practices and Procedures Manual).~~]

(b) Priority of Accounting Guidance. The priority for determining [~~determination of~~] accounting standards is set out in §7.18 of this title.

(c) Applicability. This section applies only to audited financial reports with audit dates as of December 31, 1995, or later. A foreign or alien insurer may be exempt from this rule if the foreign or alien insurer files an audited financial report in another state and the requirements for that state's audited financial reports are determined by the commissioner under [~~Commissioner pursuant to the~~] Insurance Code §401.007[~~, Article 1.15A, §6(a),~~] to be substantially similar to the requirements in Insurance Code Chapter 401[~~, Article 1.15A~~]. A foreign or alien insurer is exempt from this rule if the foreign or alien insurer files an audited financial report in another state and the requirements for that state's audited financial reports have already been determined by the commissioner under [~~Commissioner pursuant to the~~] Insurance Code §401.007[~~, Article 1.15A, §6(a),~~] to be substantially similar to the requirements in Insurance Code Chapter 401[~~, Article 1.15A~~].

(d) Purpose. [~~The Department recognizes that the~~] Insurance Code Chapter 401[~~, Article 1.15A,~~] requires audited financial reports to be prepared, and that statutory examinations are periodically conducted under [~~pursuant to~~] the Insurance Code. To improve coordination between the audited financial reports and statutory examinations, and to promote the utilization of work papers to the fullest extent during the conduct of statutory examinations, certain minimum standards, guidelines, and procedures must be incorporated by the accountant during the preparation of the work papers and the audited financial report. The purpose of this section is to establish those requirements.

(e) Conduct of audit. The annual audit required by [~~the~~] Insurance Code Chapter 401 must[~~, Article 1.15A, shall~~] be conducted in accord [~~accordance~~] with GAAS. It is not the department's intent to expand audit testing beyond the requirements of GAAS. The accountant conducting the audit must [~~shall~~] consider the procedures and conventions set out in paragraphs (1) - (4) of this subsection, as follows:

(1) audit procedures and format contained in the NAIC Examiners Handbook;

(2) accounting treatments for the particular line(s) of insurance contained in §7.18 of this title and the NAIC Annual Statement Instructions adopted by the commissioner under §7.68 of this title [~~Commissioner~~];

(3) valuation procedures contained in the NAIC Investment Analysis Office's *Purposes and Procedures Manual* [~~Purposes and Procedures of the Securities Valuation Office manual~~] and §7.18 of this title; and

(4) any order(s) of the commissioner [~~Commissioner~~] issued to a particular company.

(f) Contents of audited financial reports. In addition to the contents specified in [~~the~~] Insurance Code §401.009[~~, Article 1.15A, §10(a) - (c)~~], audited financial reports must [~~shall~~] contain the statements and reports set out in paragraphs (1) - (3) of this subsection.

(1) Audit procedures and format contained in the NAIC Examiners Handbook.

(2) The balance sheet, statement of gain or loss from operations, statement of changes in capital and surplus, and the statement of cash flow prepared in accord [~~accordance~~] with the Texas Administrative Code including [~~and~~] the NAIC Annual Statement Instructions adopted by the commissioner in §7.68 of this title. [~~Commissioner.~~]

(3) In addition to the items that must be recorded in the notes to the financial statements under [~~as required by the~~] Insurance Code §401.009(b)[~~, Article 1.15A, §10(c)~~], the notes must include:

(A) any exceptions to compliance with the financial, investment, and holding company provisions of the Insurance Code or the Texas Administrative Code noted during the audit; [~~and~~]

(B) a schedule and explanation of material nonadmitted [~~non-admited~~] assets;

(C) any and all [~~shall also be recorded in notes. The notes shall also include those~~] items required by the [~~appropriate~~] NAIC Annual Statement Instructions and the NAIC *Accounting Practices and Procedures Manual* under §7.68 and §7.18 of this title; and [~~Accounting Practices and Procedures Manual.~~]

(D) [~~Furthermore, the notes shall include~~] a reconciliation of any differences, if any, between the audited statutory financial statements and the Annual Statement filed with the department, with a written description of the nature of these differences.

(g) Contents of work papers.

(1) For those items subjected to detailed tests by the accountant during the course of the audit, the work papers must [~~shall~~] contain a notation of whether any material exceptions exist for each of the items set out in subparagraphs (A) and (B) of this paragraph.

(A) For invested assets:

(i) compliance as an authorized investment has been determined and does not exceed statutory limitations;

(ii) ownership and possession have been verified; and

(iii) securities are valued in accord [~~accordance~~] with the instructions of the NAIC Investment Analysis Office's *Purposes and Procedures Manual* [~~Purposes and Procedures of the Securities Valuation Office manual~~] and §7.18 of this title.

(B) For assets other than invested assets:

(i) the [~~such~~] assets are admitted in accord [~~accordance~~] with the appropriate provision of the Insurance Code or Texas Administrative Code; and

(ii) the [~~such~~] assets are valued in accord [~~accordance~~] with the Texas Administrative Code and §7.18 of this title.

(2) If the regulated entity subject to the audit has any material reinsurance agreement or agreements, the work papers must [~~shall~~] contain an outline addressing the items set out in subparagraphs (A) - (E) of this paragraph as follows:

(A) a summary of the insurer's overall reinsurance program;

(B) an explanation of relevant provisions by which liabilities are transferred to the reinsurer and any contingency provisions by which the reinsurer can cause the ceding insurer to reassume liabilities previously transferred to the reinsurer;

(C) an explanation about assets held in trust, depositories, or letters of credit by which any reserve liabilities are collateralized;

(D) a verification of any material reinsurance balance ceded or assumed; and

(E) an explanation of amounts recoverable from unlicensed reinsurers that are not collateralized, or disputed reinsurance recoverables.

(3) The work papers of any audited entity must [~~shall~~] contain:

(A) any letters from the accountant to management commenting on or explaining internal management operating procedures;

(B) computer-generated work papers;

(C) audit program;

(D) reports prepared by outside consultants;

(E) for policy liabilities, a note that reserves are established in accord [~~accordance~~] with policy and statutory provisions, and that required payments were made under [~~pursuant to~~] any contract provisions;

(F) for all other liabilities, a note that all material liabilities of the company have been properly recorded; and

(G) internal control work papers.

(4) The work papers of any audited entity must [~~shall~~] contain a notation that the accountant has determined that the [~~such~~] entity has: [~~met the requirements of subparagraphs (A) and (B) of this paragraph.~~]

(A) met the filing [~~Filing~~] requirements in [~~have been met of the~~] Insurance Code[~~,~~] Chapter 823 and the Texas Administrative Code, including [~~but not limited to~~] the requirements that all shareholder dividends have been reported to the department within two business days after declaration and at least 10 [~~ten~~] days prior to payment as required under Insurance Code §823.053;[~~,~~] and that all other dividends have been declared and [~~to have been~~] paid in accord [~~accordance~~] with the applicable provisions of the Insurance Code and the Texas Administrative Code, including Chapter 403, Chapter 1112, §841.253, and[~~, Articles 3.11, 21.31, 21.32, 21.32A, or~~] §884.253; and[~~, whichever statute is applicable.~~]

(B) maintained unencumbered [~~Unencumbered~~] assets [~~have been maintained~~] in an amount at least equal to reserve liabilities as required under [~~by~~] Insurance Code Chapter 422[~~, Article 21.39-A~~].

(h) Accessibility of work papers. The accountant must [~~shall~~] provide all work papers to the examiner, whether during or after the preparation of the audited financial report. The examiner may obtain, if necessary, photocopies of work papers, as provided by [~~the~~] Insurance Code §401.020(c)[~~, Article 1.15A, §17(e)~~], so as not to burden the accountant if a statutory examination is occurring at the same time as an annual audit. Information obtained under this section is subject to the confidentiality standards imposed by Insurance Code §§401.020(c), 401.057, 401.105, 401.106, [~~Articles 1.15, §8(b); 1.15A, §17(c); 1.18;~~] and [§]823.011.

(i) Sanction. Failure to comply [~~Noncompliance~~] with this section may result in the commissioner [~~Commissioner~~] initiating action under [~~pursuant to~~] Insurance Code §401.012 [~~Article 1.15A, §12(d)~~] and Chapter 82.

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, 2014.

TRD-201404222
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: October 19, 2014
For further information, please call: (512) 463-6327

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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 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO OPERATIONS DIVISION

SUBCHAPTER C. BINGO GAMES AND EQUIPMENT

16 TAC §402.300

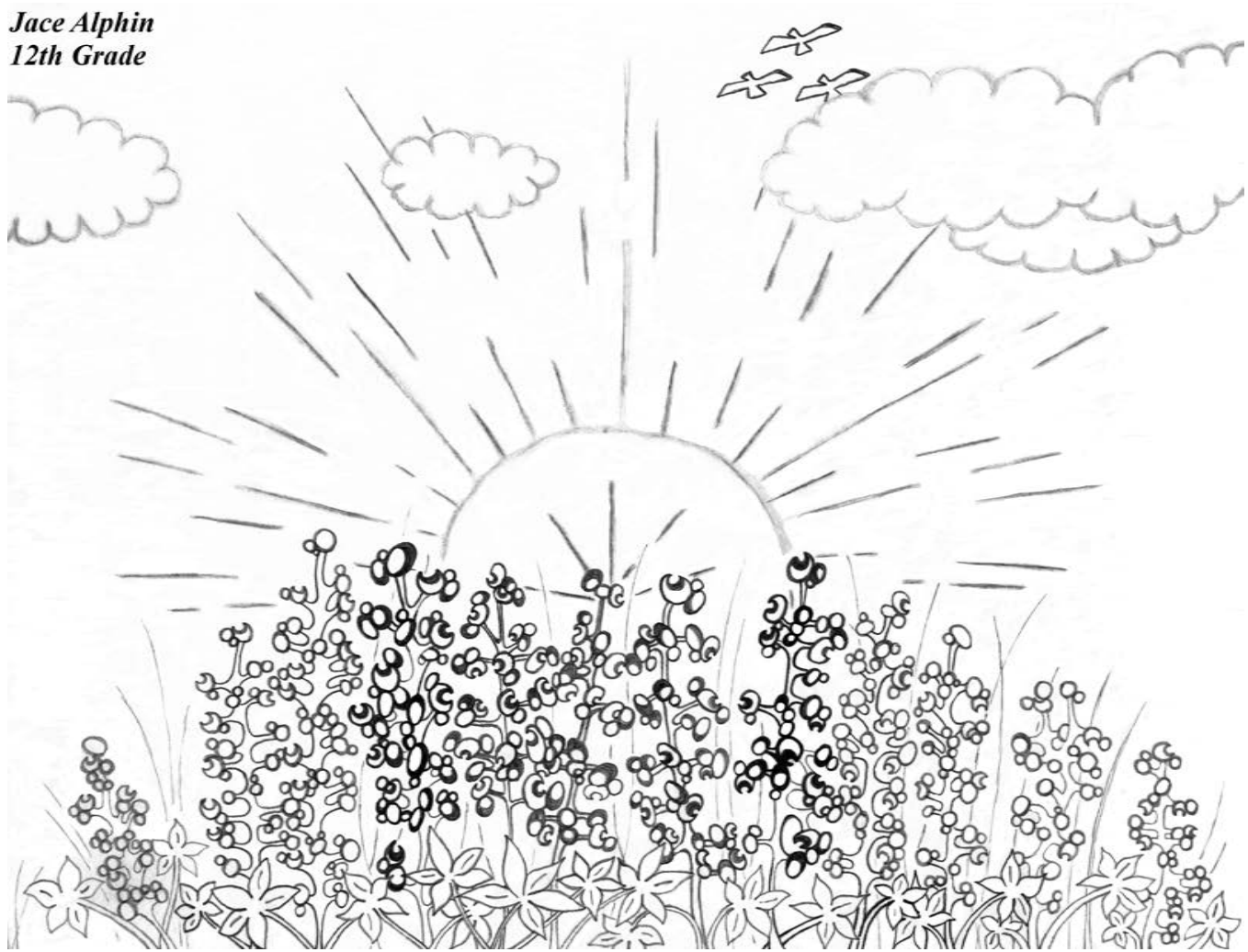
Proposed amended §402.300, published in the February 28, 2014, issue of the *Texas Register* (39 TexReg 1321), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on September 3, 2014.

TRD-201404203

♦ ♦ ♦

Jace Alphin
12th Grade



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 201. GENERAL ADMINISTRATION

1 TAC §201.8

The Texas Department of Information Resources (department) adopts new §201.8, Plans and Reports Required of Institutions of Higher Education, without changes to the proposed text as published in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4326). The addition of the new rule to 1 TAC Chapter 201, concerning the general administration of the department, ensures the rules more accurately reflect legislative actions and the practices of the department. The new rule is necessary, in part, as the result of passage of Senate Bill 59 (83R), effective as of September 1, 2013, which added §2054.1211, Texas Government Code, concerning the general administration of the department, the basis upon which these rules were originally promulgated.

The new rule, §201.8, was developed in close consultation with the Information Technology Council for Higher Education (ITCHE) and a final draft was submitted for their review and impact assessment prior to bringing the rule to the Board. The assessment of the impact of the proposed changes on institutions of higher education was prepared in consultation with ITCHE in compliance with §2054.121(b), Texas Government Code. The new rule §201.8 applies to the reports and plans in Chapter 2054, Texas Government Code, required of institutions of higher education, and has no direct impact on state agencies.

The new rule §201.8 adds subsection (a) to specify the plans and reports required of institutions of higher education under Chapter 2054, Texas Government Code. Paragraph (1) requires institutions of higher education to submit reports pursuant to §2054.052, Texas Government Code. Paragraph (2) requires Information Resources Managers at institutions of higher education to submit training and continuing education reports pursuant to §2054.076, Texas Government Code. Paragraph (3) specifies reporting by institutions of higher education regarding vulnerability reports as set forth in §2054.077, Texas Government Code. Paragraph (4) clarifies the reporting by institutions of higher education for the Information Resources Deployment Review as set forth in §2054.0965, Texas Government Code. Paragraph (5) specifies the reporting of Information Security Plans by institutions of higher education as set forth in §2054.133, Texas Government Code. Paragraph (6) references the network configuration information that may be requested of institutions of higher education under §2054.203, Texas Government Code; and paragraph (7) references the inclusion of institutions of higher education in the department's survey of accessibility practices pursuant to §2054.464, Texas Government Code.

Subsection (b) is added to clarify the department will coordinate with the Information Technology Council for Higher Education regarding the preparation and submission of such plans and reports required under Chapter 2054, Texas Government Code.

No comments were received on the proposed new rule.

The new rule is adopted pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; and §2054.1211, Texas Government Code, which requires the department and the Information Technology Council for Higher Education to review all reports and plans under Chapter 2054, Texas Government Code.

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

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

Filed with the Office of the Secretary of State on August 29, 2014.

TRD-201404174
Martin H. Zelinsky
General Counsel
Department of Information Resources
Effective date: September 18, 2014
Proposal publication date: June 6, 2014
For further information, please call: (512) 475-4700

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CHAPTER 209. MINIMUM STANDARDS FOR MEETINGS HELD BY VIDEOCONFERENCE

The Texas Department of Information Resources (department) adopts amendments to 1 TAC Chapter 209, §§209.1, 209.3, 209.11, and 209.31, concerning Minimum Standards for Meetings Held by Videoconference, without changes to the proposed text as published in the April 25, 2014, issue of the *Texas Register* (39 TexReg 3302). The department also revises the title for Subchapter B, concerning minimum standards for meetings held by videoconference, to ensure the rules address the direction provided by the legislature and reflect the purpose of Chapter 551, Texas Government Code. The amendments are necessary, in part, as the result of passage of House Bill 2414 (83R) and Senate Bill 984 (83R), effective as of September 1, 2013, which amended §551.001 and §551.127, Texas Government Code, in which DIR is directed to specify minimum technical standards for audio and video signals by rule when videoconferencing technol-

ogy is deployed in the context of an open meeting by a governmental body.

The department amends the title of Subchapter B within 1 TAC Chapter 209 to more accurately reflect the entities to which the rules apply, as set forth in the Open Meetings Act, Chapter 551, Texas Government Code.

In addition, the department also amends 1 TAC Chapter 209, §209.1 to add paragraph (3) and amend renumbered paragraph (4). The definition provided in new paragraph (3) serves to clarify applicability in that the standards set forth in this rule only apply to meetings subject to Chapter 551, Texas Government Code ("Texas Open Meetings Act"). The amended definition of renumbered paragraph (4) reflects the amended definition of the same in the Texas Open Meetings Act. The department amends 1 TAC Chapter 209, §209.3 to define governmental body, a definition encompassing state agencies and local governments, as specified in §551.001(3), Texas Government Code.

The department also amends 1 TAC Chapter 209, §209.11 and §209.31 to clarify the nature of the external publications put forth by the department for the purposes of further clarifying the applicable standards for the use of videoconferencing in meetings subject to the Texas Open Meetings Act. The department amends §209.11 to specify that the external publications are applicable to all governmental bodies. Such external publications are meant to provide entities additional clarification regarding the standards while affording the department the level of flexibility necessary to accommodate for the rapidly evolving nature of the technology.

The amendments apply to all governmental bodies, as defined by §551.001(3), Texas Government Code, which includes state agencies, local governments, and institutions of higher education.

The department initially published proposed amendments to 1 TAC Chapter 209 in the *Texas Register* on November 22, 2013 (38 TexReg 8329). The department received no public comments to the proposed rules during the 30-day comment period; however, staff recommended revised amendments to §209.3 and §209.11 and amending the title to Subchapter B after discussing the proposed rules with an interested party. The proposed revised amendments were published in the April 25, 2014, issue of the *Texas Register* (39 TexReg 3302).

No comments were received on the proposed amendments.

SUBCHAPTER A. DEFINITIONS

1 TAC §209.1, §209.3

The amendments are adopted pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code, and §551.127(i), Texas Government Code, which directs the department to adopt rules specifying the minimum standards for audio and video signals at a meeting held by videoconference call. The assessment of the impact of the proposed changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education in compliance with §2054.121 (b), Texas Government Code.

No other code, article or statute is affected by the adoption.

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 29, 2014.

TRD-201404175
Martin H. Zelinsky
General Counsel
Department of Information Resources
Effective date: September 18, 2014
Proposal publication date: April 25, 2014
For further information, please call: (512) 475-4700

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SUBCHAPTER B. VIDEOCONFERENCES HELD BY GOVERNMENTAL BODIES, EXCLUDING INSTITUTIONS OF HIGHER EDUCATION

1 TAC §209.11

The amendments are adopted pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code, and §551.127(i), Texas Government Code, which directs the department to adopt rules specifying the minimum standards for audio and video signals at a meeting held by videoconference call. The assessment of the impact of the proposed changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education in compliance with §2054.121 (b), Texas Government Code.

No other code, article or statute is affected by the adoption.

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

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Martin H. Zelinsky
General Counsel
Department of Information Resources
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Proposal publication date: April 25, 2014
For further information, please call: (512) 475-4700

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SUBCHAPTER C. VIDEOCONFERENCES HELD BY INSTITUTIONS OF HIGHER EDUCATION

1 TAC §209.31

The amendments are adopted pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code, and §551.127(i), Texas Government Code, which directs the department to adopt rules specifying the minimum standards for audio and video signals at a meeting held by videoconference call. The assessment of the impact of the proposed changes on institutions of higher education was prepared in consultation with the Information Technol-

ogy Council for Higher Education in compliance with §2054.121 (b), Texas Government Code.

No other code, article or statute is affected by the adoption.

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

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Martin H. Zelinsky
General Counsel
Department of Information Resources
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For further information, please call: (512) 475-4700

CHAPTER 213. ELECTRONIC AND INFORMATION RESOURCES

The Texas Department of Information Resources (department) adopts amendments to 1 TAC Chapter 213, §§213.10 - 213.16, 213.19 - 213.21, 213.30 - 213.36, and 213.39 - 213.41 without changes to the proposed text as published in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4327). The amendments to §§213.1, 213.17, 213.18, 213.37, and 213.38 are adopted with changes to the proposed text as published in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4327) and will be republished.

The amendments include the addition of new definitions and the modification of some existing definitions in §213.1; requirements in §213.17 and §213.37 for EIR compliance exceptions and exemptions; 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 §213.1 the department adds the following definitions because of new or revised content in 1 TAC Chapter 213: "Accessible", "Department", "Major Information Resources Project", "Section 508", and "Technical Accessibility Standards and Specifications".

The definitions of "Electronic and Information Resources (EIR)" and "Voluntary Product Accessibility Template (VPAT)" have been broadened for clarification; and definitions for "Exception" and "Exemption" have been changed to include the phrase "non-compliance" rather than "non-conformance". The department deletes the definitions for "Buy Accessible Wizard", "Commercially unavailable", "Electronic and information Resources accessibility standards", and "Web Accessibility Standards" that are no longer applicable for new or revised content in 1 TAC Chapter 213.

In addition, the department amends the term "electronic and information resources" as "EIR" in §§213.10 - 213.21 (for state agencies) and §§213.30 - 213.41 (for institutions of higher education) for simplicity and brevity.

In 1 TAC §213.17, for state agencies; and §213.37, for institutions of higher education, the department adds language to include specific exception areas pursuant to §§2054.460, 2054.462, and 2054.463, Texas Government Code. The department clarifies language for exceptions based on significant difficulty or expense and includes new language requiring additional supporting information for each exception. Procedures for creating and maintaining exception requests have also been clarified. The department also modifies language requiring an exemption to include additional information as justification for the exemption.

In 1 TAC §213.18, for state agencies; and §213.38, for institutions of higher education, the amendments include the elimination of the use of Buy Accessible Wizard documents as a means of communicating accessibility compliance and sets forth provisions for the department and agencies to request other evidence of a vendor's ability to produce accessible EIR products and services. The department requires that a procurement policy be implemented and that an agency's contract or procurement oversight staff shall monitor the agency's procurement processes and contracts for accessibility compliance. The department has clarified to what EIR these procurement provisions apply. The department adds a new provision requiring accessibility testing for projects which meet the criteria of a major information resource project.

In 1 TAC §213.19, for state agencies; and §213.39, for institutions of higher education, the department reorganizes existing provisions and requires the executive director of each agency and the president or chancellor of each institution of higher education to ensure appropriate staff receives training necessary to meet accessibility-related rules.

In 1 TAC §213.20, for state agencies; and §213.40, for institutions of higher education, the amended rule requires responses to the electronic and information resources state agency survey to be supported by agency documentation.

In 1 TAC §213.21, for state agencies; and §213.41, for institutions of higher education, the department adds a requirement for the department to designate and maintain a person responsible for statewide accessibility initiatives. The department has made clarifications to provisions related to the publication of agency accessibility policies and plans.

The department includes a new provision requiring agencies and institutions of higher education to provide contact and other information for the Accessibility Coordinator and to inform the department of any accessibility coordinator changes within a prescribed timeframe. The department also requires the EIR Accessibility Coordinator position to be located within the organization to ensure effectiveness. Finally, the department adds a requirement for agencies and institutions of higher education to establish goals for making EIR accessible.

The department published a formal notice of rule review in the September 6, 2013, issue of the *Texas Register* (38 TexReg 5907). The proposed amendments were published in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4327). The department received written comments from one interested individual during the 30-day comment period in response to the proposed rules. A summary of the comments and responses follows.

Comment concerning §213.1(1), Applicable Terms and Technologies for Electronic Information Resources. The commenter suggested a correction for error in definition of Accessible.

Response: The department agrees with the correction. The corrected text for §213.1(1) is revised to eliminate the word "the": "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."

Comment concerning §213.18(a)(2) for state agencies and §213.38(a)(2) for institutions of higher education related to procurements. The commenter suggested revising text by adding "credible" before "evidence" to be consistent with §213.18(b)(2) and §213.38(b)(2).

Response: The department agrees with the suggested revision and has revised the text for §213.18(a)(2) and §213.38(a)(2) to include "credible". In addition the department has determined that to retain consistency between subsections (a) and (b) within §213.18 and §213.38, the phrase "contractual warranties for accessibility" should be added to §213.18(a)(2) and §213.38(a)(2). The text is revised to: *"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."

Furthermore, the department has determined that there should be an additional consistent use of a phrase between subsections (a) and (b) for §213.18 and §213.38. The text "all that apply" is added to subsection (a) for both §213.18 for state agencies and §213.38 for institutions of higher education. The text for §213.18(a) is revised to: "The department, in establishing commodity procurement contracts, for which the solicitation is issued on or after January 1, 2015, shall obtain and make available to state agencies *all that apply:"* The text for §213.38(a) is revised to: "The department, in establishing commodity procurement contracts, for which the solicitation is issued on or after January 1, 2015, shall obtain and make available to institutions of higher education *all that apply:"*

Comment concerning §213.18(e) for state agencies and §213.38(e) for institutions of higher education related to procurements. The commenter expressed concern the subsection is ambiguous in how it excludes accessibility requirements for information technology acquired by a contractor or grantee, incidental to a contract or grant, provided the technology does not become State property upon completion of the contract.

Response: In order to eliminate the ambiguity, the department has deleted both subsections and believes §213.38(d) adequately addresses the requirements for accessibility with regard to EIR technology used by a contractor. Subsequent subsections are renumbered to retain proper order.

Comment concerning §213.17(3)(D) for state agencies and §213.37(3)(D) for institutions of higher education related to compliance exceptions and exemptions. The commenter requested clarification on the type of documentation needed to justify an exception for a significant difficulty or expense for an EIR product.

Response: In order to provide clarity, the department has added the following text to both subsections: "Examples may include, but are not limited to, agency budget, grants, and alternative vendor or product selections."

SUBCHAPTER A. DEFINITIONS

1 TAC §213.1

The amendments and revisions are adopted 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. The assessment of the impact of the proposed changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education in compliance with §2054.121(b), Texas Government Code.

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

§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) 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.

(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.

(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.

(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.

(5) Department--The Department of Information Resources.

(6) Electronic and information resources (EIR)--Includes information technology and any equipment or interconnected system or subsystem of equipment used to create, convert, duplicate, 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), Electronic Information Technology (EIT), etc. can be considered interchangeable terms with EIR for purposes of applicability or compliance with this chapter.

(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 Executive Director of an Agency or the President or Chancellor of an Institution of Higher Education.

(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.

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

(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.

(12) Product--Electronic and information technology.

(13) Section 508 Standards--The standards 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.

(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.

(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.

(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.

(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 persons) or computers with special modems. TTYs are also called text telephones.

(19) Voluntary Product Accessibility Template (VPAT)--A vendor-supplied form for a commercial 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.

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

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Martin H. Zelinsky
General Counsel
Department of Information Resources
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SUBCHAPTER B. ACCESSIBILITY STANDARDS FOR STATE AGENCIES

1 TAC §§213.10 - 213.21

The amendments and revisions are adopted 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. The assessment of the impact of the proposed changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education in compliance with §2054.121(b), Texas Government Code.

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

§213.17. Compliance Exceptions and Exemptions.

Effective 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 executive director of the agency, or an exemption is granted by the department.

(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 §2054.460, Texas Government Code.

(2) Exceptions for a significant difficulty or expense under §2054.460, Texas Government Code must be approved in writing by the 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.

(3) An approved exception for a significant difficulty or expense under §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 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.

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

(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.

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

(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.

(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 January 1, 2015, shall obtain and make available to state agencies all that apply:

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

(A) the URL to completed Voluntary Product Accessibility Templates (VPATs) or equivalent reporting templates;

(B) accessible electronic documents that address the same accessibility criteria in substantively the same format as VPATs or equivalent reporting templates; or

(C) the URL to a web page which explains how to request completed 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 January 1, 2015, the agency shall require a vendor to provide all that apply:

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

(A) the URL to completed VPATs or equivalent reporting templates;

(B) an accessible electronic document that addresses the same accessibility criteria in substantially the same format as VPATs or equivalent reporting templates; or

(C) the URL to a web page which explains how to request completed 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.

(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 executive director of the state agency pursuant to §2054.460, Texas Government Code, and §213.17 of this chapter, or unless an exemption is approved by the department, pursuant to §2054.460, Texas Government Code, and §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) 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.

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

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Martin H. Zelinsky
General Counsel
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SUBCHAPTER C. ACCESSIBILITY STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION

1 TAC §§213.30 - 213.41

The amendments and revisions are adopted 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. The assessment of the impact of the proposed changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education in compliance with §2054.121(b), Texas Government Code.

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

§213.37. Compliance Exceptions and Exemptions.

Effective 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) 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 §2054.460, Texas Government Code.

(2) Exceptions for a significant difficulty or expense under §2054.460, Texas Government Code must be approved in writing by the president or chancellor of an institution of higher education 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.

(3) An approved exception for a significant difficulty or expense under §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 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, agency budget, grants, and alternative vendor or product selections.

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

(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.

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

(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.

(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 January 1, 2015, shall obtain and make available to institutions of higher education all that apply:

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

(A) the URL to completed Voluntary Product Accessibility Templates (VPATs) or equivalent reporting templates;

(B) accessible electronic documents that address the same accessibility criteria in substantively the same format as VPATs or equivalent reporting templates; or

(C) the URL to a web page which explains how to request completed 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 January 1, 2015, the institution shall require a vendor to provide all that apply:

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

(A) the URL to completed VPATs or equivalent reporting templates;

(B) an accessible electronic document that addresses the same accessibility criteria in substantially the same format as VPATs or equivalent reporting templates; or

(C) The URL to a web page which explains how to request completed VPATs, or equivalent reporting templates, for any product 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.

(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 §2054.460, Texas Government Code, and §213.37 of this chapter, or unless an exemption is approved by the department, pursuant to §2054.460, Texas Government Code, and §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) 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.

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

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Martin H. Zelinsky
General Counsel
Department of Information Resources
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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER D. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM

The Texas Health and Human Services Commission (HHSC) adopts amendments to §§354.1602, 354.1612, 354.1622, 354.1633, and 354.1634, concerning the Texas Healthcare Transformation and Quality Improvement Program (THTQIP); the repeal of §354.1635, concerning Regional Healthcare Partnership (RHP) Plan Modification; and new §§354.1623, 354.1624, and 354.1635 - 354.1637, concerning the Delivery System Reform Incentive Payment (DSRIP) Program. Amended §§354.1602, 354.1612, 354.1622, 354.1633, and 354.1634; the repeal of 354.1635; and new §§354.1624 and 354.1635 - 354.1637 are adopted without changes to the proposed text as published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5263) and will not be republished. New §354.1623 is adopted with changes to the proposed text as published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5263). The text of the rule will be republished.

BACKGROUND AND JUSTIFICATION

In December 2011, HHSC received approval from the federal Centers for Medicare & Medicaid Services (CMS) for the THTQIP, a Section 1115 Waiver. The DSRIP program, one of the supplemental funding pools established by the 1115 Waiver, allows providers to gather together in RHPs to propose and implement DSRIP projects. These providers, known as performers, are given an incentive payment based upon the successful completion of metrics in each DSRIP project. As of August 2014, there are 1,491 approved and active DSRIP projects.

The DSRIP program rules are largely meant to mirror the requirements of the Program Funding and Mechanics (PFM) Protocol. The PFM Protocol is a document written jointly by HHSC and CMS that represents agreements between the two concerning the operation of the DSRIP program. HHSC and CMS continue to refine the PFM Protocol such that the DSRIP program has a greater likelihood of succeeding by bringing about positive transformation to the state's healthcare system.

Program changes were necessary to enable the continued operation of the DSRIP program. As such, HHSC and CMS recently negotiated additional requirements for the DSRIP program and included such requirements in the PFM Protocol. These amendments describe the additional requirements of the DSRIP program, provide clarifications of existing requirements, and reorganize the rules into a more logical form.

There are four major amendments to the THTQIP rules. First, the process for RHP plan modifications is clarified and moved to Division 3, concerning RHP Plan Contents and Approval. Second, the roles and responsibilities of the Independent Assessor are described. The Independent Assessor will conduct the midpoint assessment and ongoing compliance monitoring of DSRIP projects. Third, the amendments include the final form and valuation methodology for Category 3 DSRIP outcomes. Fourth, the amendments include a description of the effect of DSRIP project termination on previous DSRIP payments.

No changes were made to the text of the rules as proposed in the July 11, 2014, issue of the *Texas Register,* with the exception of

the new §354.1623. HHSC corrected a non-substantive drafting error in that section and is making the correction upon adoption.

COMMENTS

The 30 day comment period ended August 11, 2014. During this period, HHSC received no comments regarding the rules.

DIVISION 1. GENERAL

1 TAC §354.1602

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §32.021 and Texas Government Code, §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

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 8, 2014.

TRD-201404248
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
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Proposal publication date: July 11, 2014
For further information, please call: (512) 424-6900

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DIVISION 2. REGIONAL HEALTHCARE PARTNERSHIPS

1 TAC §354.1612

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §32.021 and Texas Government Code, §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

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

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Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 30, 2014
Proposal publication date: July 11, 2014
For further information, please call: (512) 424-6900

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DIVISION 3. RHP PLAN CONTENTS AND APPROVAL

1 TAC §§354.1622 - 354.1624

STATUTORY AUTHORITY

The amendments and new rules are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §32.021 and Texas Government Code, §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

§354.1623. RHP Plan Modifications and the Addition of Three-Year DSRIP Projects.

(a) A performer may submit an RHP plan modification request to HHSC to modify elements of an existing DSRIP project prospectively, including changes to milestones and metrics.

(1) The final opportunity to submit a plan modification request for the fourth demonstration year will coincide with the end of the mid-point assessment described in §354.1624 OF THIS DIVISION (relating to the Independent Assessment of DSRIP Projects). A performer will have an opportunity to initiate a plan modification for the fourth and fifth demonstration years by August 2014. Any plan modifications after August 2014 will be initiated by either HHSC or the independent assessor as part of the mid-point assessment.

(2) A performer may submit a plan modification request during the fourth demonstration year for changes during the fifth demonstration year only for changes to Category 3 outcomes and three-year DSRIP projects.

(b) If an RHP does not utilize its entire allocation for the second demonstration year, the remaining allocation can be utilized by HHSC for state initiatives. These initiatives must be accomplished through the DSRIP program.

(c) If an RHP does not utilize its entire allocation for the third, fourth, and fifth demonstration year, that RHP may propose three-year DSRIP projects. Each RHP must submit a list of all DSRIP projects from which the three-year DSRIP projects are selected.

(1) Each three-year DSRIP project on the list must be chosen from a subset of the RHP Planning Protocol as determined by HHSC.

(2) Each three-year DSRIP project on the list must include at least one implementation milestone in the third demonstration year.

(3) An RHP must prioritize the three-year DSRIP projects based on regional needs except that the listed projects must alternate by affiliated IGT entity.

(4) Each three-year DSRIP project must identify, and have written confirmation, of the IGT source.

(5) Each three-year DSRIP project must demonstrate significant benefit to the Medicaid and indigent populations.

(6) An RHP must hold a public meeting to consider the list of three-year DSRIP projects prior to submitting the list to HHSC. When submitting the list to HHSC, the RHP must also submit:

(A) a description of the processes used to engage potential performers, public stakeholders, and consumers;

(B) a description of the regional approach for evaluating and prioritizing DSRIP projects; and

(C) a list of DSRIP projects that were considered by the RHP but not included on the list, regardless of whether or not those DSRIP projects had an identified source of IGT.

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 8, 2014.

TRD-201404250
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
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Proposal publication date: July 11, 2014
For further information, please call: (512) 424-6900

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DIVISION 4. DSRIP

1 TAC §§354.1633 - 354.1637

STATUTORY AUTHORITY

The amendments and new rules are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §32.021 and Texas Government Code, §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

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

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TRD-201404251
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
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1 TAC §354.1635

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §32.021 and Texas Government Code, §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

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

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Jack Stick
Chief Counsel
Texas Health and Human Services Commission
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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 §1.13

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC §1.13, concerning Adjudicative Hearing Procedures, without changes to the proposed text as published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5274). The rule will not be republished.

REASONED JUSTIFICATION: The current Department rule requires filing a "complaint" at the State Office of Administrative Hearings ("SOAH") in order to initiate an adjudicative hearing. Staff currently produces a "Notice of Report to the Board," a document required by Texas Government Code, §2306.043, that contains all the elements of a complaint. The creation and filing of both documents is inefficient and may create confusion. Accordingly, the Board finds that the practice of filing a complaint to initiate a hearing should be discontinued and the rule should instead require the filing of the Notice of Report to the Board. The Board further finds that the other amendments are necessary to conform this rule with the rules of SOAH.

The Board approved the final order adopting the proposed amendments on September 4, 2014.

The Department accepted public comments between July 11, 2014, and August 11, 2014. Comments regarding the amendments were accepted in writing and by fax. No comments were received.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code Annotated, §2306.053, which authorizes the Department to adopt rules, and more specifically, Texas Government Code Annotated, §2306.045, which authorizes the director to set a hearing at SOAH and requires giving written notice to the respondent.

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, 2014.

TRD-201404241

Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: September 25, 2014
Proposal publication date: July 11, 2014
For further information, please call: (512) 475-3959

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TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 301. DEFINITIONS

16 TAC §301.1

The Texas Racing Commission adopts an amendment to 16 TAC §301.1, concerning Definitions, without changes to the proposed text as published in the June 27, 2014, issue of the *Texas Register* (39 TexReg 4873). The amended rule will not be republished.

The amendment adds a definition for "historical racing". This change is adopted in conjunction with new rules to authorize and regulate historical racing under new Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register.* The amendment also corrects a technical error in the section by relocating the definition of "tote board" to its proper place in alphabetical order. Since this section lists the definitions in alphabetical order, the amendment renumbers several existing definitions in order to accommodate the changes.

No comments were received regarding adoption of this specific amendment. The Commission did receive comments regarding the authorization of historical racing, and those comments are addressed elsewhere within this issue of the *Texas Register* as part of the adoption of new Chapter 321, Subchapter F, Regulation of Historical Racing.

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

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 8, 2014.

TRD-201404278
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: September 28, 2014
Proposal publication date: June 27, 2014
For further information, please call: (512) 833-6699

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CHAPTER 303. GENERAL PROVISIONS
SUBCHAPTER B. POWERS AND DUTIES OF THE COMMISSION

16 TAC §303.31, §303.42

The Texas Racing Commission adopts amendments to 16 TAC §303.31, concerning the regulation of racing, and §303.42, concerning the approval of charity race days, without changes to the proposed text as published in the June 27, 2014, issue of the *Texas Register* (39 TexReg 4875). The amended rules will not be republished.

The amendment to §303.31 removes the phrase "live and simulcast" from the rule because the Commission's authority to regulate pari-mutuel wagering on horse and greyhound racing extends beyond live and simulcast racing and includes the authority to regulate pari-mutuel wagering on historical racing.

The amendments to §303.42 modify the process by which charity race dates are approved such that horse racetracks conducting historical racing shall conduct at least three charity days per year instead of two charity days. In addition, the amendments provide that horse racetracks that are conducting historical racing will contribute at least 1.5% of the historical racing handle on a charity race day to a charity benefiting equine veterinary research and will contribute at least 0.5% of the historical racing handle to a charity benefiting youth participation in equine sports and activities. Similarly, the amendments provide that greyhound racetracks conducting historical racing will contribute at least two percent of the pari-mutuel handle from historical racing on charity racing days to a charity that provides for the medical care and rehabilitation of injured greyhounds. The changes to §303.42(d)(1) are made to ensure that the charities benefiting from live and simulcast racing under the previous rule are not harmed by the amendments.

No comments were received that specifically addressed the adoption of these particular amendments. The Commission did receive comments that addressed the authorization of historical racing as whole, and those comments are addressed elsewhere within this issue of the *Texas Register* as part of the adoption of new Chapter 321, Subchapter F, Regulation of Historical Racing.

The amendment to §303.31 is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering. The amendment to §303.42 is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §8.02 and §10.01, which require the Commission to adopt rules relating to the conduct of charity days.

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 8, 2014.

TRD-201404279

Mark Fenner
General Counsel
Texas Racing Commission
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Proposal publication date: June 27, 2014
For further information, please call: (512) 833-6699

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CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

The Texas Racing Commission adopts amendments to 16 TAC §309.8, concerning racetrack license fees; §309.297, concerning purse accounts; §309.299, concerning the horsemen's representative; and §309.361, concerning the greyhound purse account and kennel account, without changes to the proposed text as published in the June 27, 2014, issue of the *Texas Register* (39 TexReg 4876). The rules will not be republished.

The amendment to §309.8 removes the phrase "live and simulcast" and inserts the phrases "and pari-mutuel wagering" and "historical racing". The changes are made to specify that the Commission's authority to regulate pari-mutuel wagering on horse and greyhound racing extends beyond live and simulcast racing and includes the authority to regulate pari-mutuel wagering on historical racing.

The amendment to §309.297 provides that all horse purse monies generated from wagering on racing at horse racetracks are trust funds held by the association as custodial trustee for the benefit of horsemen, regardless of whether generated from wagering on live, simulcast, or historical racing.

The amendment to §309.299 provides that the horsemen's representative is recognized and authorized to represent horse owners and trainers on matters relating to the conduct of racing at Texas racetracks, including matters related to live, simulcast, and historical racing.

The amendment to §309.361 provides that all greyhound purse monies generated from wagering on racing at greyhound racetracks are trust funds held by the association as custodial trustee for the benefit of kennel owners and greyhound owners, regardless of whether generated from wagering on live, simulcast, or historical racing. In addition the amendment provides that the Texas Greyhound Association is authorized to negotiate with each association regarding the association's racing program, including issues related to historical racing.

No comments were received that specifically addressed the adoption of these particular amendments. The Commission did receive comments that addressed the authorization of historical racing as whole, and those comments are addressed elsewhere within this issue of the *Texas Register* as part of the adoption of new Chapter 321, Subchapter F, Regulation of Historical Racing.

SUBCHAPTER A. RACETRACK LICENSES
DIVISION 1. GENERAL PROVISIONS

16 TAC §309.8

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering; §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering; and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

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 8, 2014.

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Mark Fenner
General Counsel
Texas Racing Commission
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For further information, please call: (512) 833-6699

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SUBCHAPTER C. HORSE RACETRACKS
DIVISION 4. OPERATIONS

16 TAC §309.297, §309.299

The amendments are adopted under Texas Revised Civil Statutes Annotated, Article 179e, §6.08, which provides that legal title to purse accounts at a horse racing association is vested in the horsemen's organization; and §1.03(77), which establishes that the horsemen's organization is recognized by the commission to represent horse owners and trainers in negotiating and contracting with associations on subjects relating to racing.

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

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TRD-201404283
Mark Fenner
General Counsel
Texas Racing Commission
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For further information, please call: (512) 833-6699

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SUBCHAPTER D. GREYHOUND RACETRACKS
DIVISION 2. OPERATIONS

16 TAC §309.361

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering; §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves

pari-mutuel wagering; and §10.05, which recognizes the Texas Greyhound Association as the officially designated state greyhound breed registry.

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

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Mark Fenner
General Counsel
Texas Racing Commission
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For further information, please call: (512) 833-6699

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CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING
SUBCHAPTER D. DRUG TESTING
DIVISION 3. PROVISIONS FOR HORSES

16 TAC §319.364

The Texas Racing Commission adopts an amendment to 16 TAC §319.364, relating to testing for androgenic-anabolic steroids, without changes to the proposed text as published in the June 27, 2014, issue of the *Texas Register* (39 TexReg 4879). The amended rule will not be republished.

The amendment removes the specific steroid threshold levels from the rule and allows the executive director to instead set the levels under the broad authority provided by 16 TAC §319.3. This approach is more flexible and allows the Commission to more quickly adopt the national standards for therapeutic medications as established by the Association of Racing Commissioners International (ARCI). In addition, the amendment would make minor changes to the language of the rule to bring it into conformity with the language of ARCI's model rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering and §3.16, which requires the Commission to adopt rules prohibiting a person from unlawfully influencing or affecting the outcome of a race, including rules relating to the use of a prohibited substance.

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

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Mark Fenner
General Counsel
Texas Racing Commission
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Proposal publication date: June 27, 2014
For further information, please call: (512) 833-6699

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CHAPTER 321. PARI-MUTUEL WAGERING

The Texas Racing Commission adopts amendments to 16 TAC §321.5, concerning the pari-mutuel auditor; §321.12, concerning time synchronization; §321.13, concerning the pari-mutuel track report; §321.23, concerning wagering explanations; §321.25, concerning wagering information; and §321.27, concerning the posting of race results. The Texas Racing Commission also adopts new Subchapter F, Regulation of Historical Racing, which includes new §321.701, concerning the purpose of historical racing; §321.703, concerning historical racing; §321.705, concerning requests to conduct historical racing; §321.707, concerning the requirements for operating a historical racing totalisator system; §321.709, concerning types of pari-mutuel wagers for historical racing; §321.711, concerning historical racing pool and seed pools; §321.713, concerning deductions from pari-mutuel pools; §321.715, concerning contract retention and pari-mutuel wagering record retention; §321.717, effect of conflict; and §321.719, severability. With the exception of the adoptions of new §321.703 and §321.705, the adoptions are made without changes to the proposed text as published in the June 27, 2014, issue of the *Texas Register* (39 TexReg 4880) and will not be republished. Section 321.703 and §321.705 are adopted with changes in response to a request from one commenter and will be republished.

The amendment to §321.5 adds the duty to verify the wagering pool totals of historical racing pools to the responsibilities of the pari-mutuel auditor.

The amendment to §321.12 clarifies that the rule's time synchronization requirements are only applicable to live and simulcast races.

The amendment to §321.13 clarifies that an association's pari-mutuel summary report includes information regarding each day of historical racing.

The amendment to §321.23 requires that historical racing terminals must provide an explanation of the rules of the various types of wagers offered through the terminal, must provide information about the expiration date of vouchers issued by the terminal, and must print the expiration date of a voucher on the voucher.

The amendment to §321.25 requires that wagering information for historical racing must be audited by an independent third party approved by the executive secretary before the information is displayed or wagers are taken on the associated race.

The amendment to §321.27 removes the words "live and simulcast" from the rule so that an association's plan for providing race results to the public will also include a plan for providing the results of a historical race.

New §321.701 provides the purpose statement for authorizing and regulating historical racing.

New §321.703 provides that associations that have been granted live race dates may begin conducting historical racing, describes how amounts for purses and breeder incentives shall

be determined, sets out requirements for alternative dispute resolution, describes how breakage shall be allocated, requires associations to submit the form of historical racing contracts to the executive secretary for review and approval, and requires associations to submit copies of executed historical racing contracts to the Commission.

New §321.705 requires associations to submit a written request to the Commission for approval to conduct historical racing, to offer new types of wagers, or to change the appearance or presentation of previously approved wagers, and sets out the requirements that each request must meet. The rule sets out the factors that the Commission will consider in determining whether to approve a request to conduct historical racing. The rule provides that the Commission will not approve any wager that would violate the prohibitions found in Article III, Section 47 of the Texas Constitution. The rule sets out the procedures an association and the executive secretary will follow before updating the software of a historical racing totalisator system or installing new historical racing equipment that was not previously approved. The rule provides that the Commission will not limit an association's ability to conduct historical racing based on the brand of historical racing equipment, so long as the totalisator system meets the requirements of the Commission's rules.

New §321.707 sets out the requirement for operating a historical racing totalisator system, including requirements for the selection of a race, the selection and presentation of past performance information, and the subsequent presentation of the race results, and provisions relating to a complete breakdown of a historical racing terminal.

New §321.709 describes the types of pari-mutuel wagers for historical racing that may be approved by the Commission.

New §321.711 provides that associations may not conduct historical racing in a manner that allows patrons to wager against the association. The rule also provides that seed pools shall be maintained so that amount available at any given time is sufficient to ensure that the patron will be paid the minimum payout for a winning wager. The association may provide funding for the initial seed pool for each type of wager, and the funding for the initial seed pool is non-refundable.

New §321.713 provides that an association may deduct a portion of each historical racing pool as its commission, and provides that the allocations from the association's commission as described in §321.703(b) and (d) apply to that portion of the commission that remains after deduction of all licensing fees, royalties, expenses, and any other costs.

New §321.715 provides that historical racing contracts are subject to inspection by the executive secretary. The rule provides that an association must maintain copies of each historical racing contract for at least one year after the end of the term of the contract. The rule also provides that each association shall maintain complete records of all wagering on historical races for at least two years.

New §321.717 provides that if provisions of this subchapter conflict with Chapter 321, Subchapter A or other Commission rules, that this subchapter controls with respect to historical racing.

New §321.719 is a severability provision providing that if any part of this subchapter or its application to any person or circumstance is held invalid, the invalidity does not affect other parts or application of the rules that can be given effect without the invalid part or application.

During the public comment period, the Commission received over 13,000 comments in the form of letters, emails, faxes and petition signatures. Approximately 9,900 comments were in favor of the proposed rules and approximately 3,100 were opposed. The Commission also received individual comments from state representatives, state senators, and legislative candidates, with most legislators' comments in opposition to the proposals and some in support. Industry organizations that provided detailed comments in support of the proposals included the Texas Horsemen's Partnership, the American Quarter Horse Association, the Texas Quarter Horse Association, the Texas Arabian Breeders' Association, the Texas Paint Horse Association, the Texas Thoroughbred Association, the Texas HBPA, the Texas Thoroughbred HBPA, the Texas Greyhound Association, Sam Houston Race Park, Valley Race Park, Laredo Race Park, Laredo Downs, Tesoros Race Park, Gulf Greyhound Park, Gillespie County Fair, and Gulf Coast Racing. Several individuals, mostly horsemen, also sent detailed comments in support of the proposals.

Non-industry organizations that provided detailed comments in support included the Texas Association of Business, the Franklin-Simpson Chamber of Commerce, the City of Grand Prairie, and Gaming Laboratories International.

Non-industry organizations that provided detailed comments in opposition included the Kickapoo Traditional Tribe of Texas, Grey2K USA, the Texas Baptist Christian Life Commission, the First Baptist Church of Arlington, the American Society for the Prevention of Cruelty to Animals, and the Texas Public Policy Foundation. As part of its comment, the Texas Baptist Christian Life Commission requested "statements of responses" pursuant to §2001.030 of the Texas Government Code.

Commission staff also held a public comment hearing on July 17, 2014. Eighteen individuals testified, with fifteen in favor and three against the proposals. Two of the three who testified in opposition represent the bingo industry and the third represents the Texas Humane Legislation Network. In addition to those who testified, 45 turned in comment cards, with 43 in support of the historical racing proposals and two opposed.

Summaries of the comments in opposition or requesting amendments are as follows:

COMMENT SUMMARY: Several commenters objected to the rules because of concerns that historical racing terminals are illegal under the Texas Constitution or the Penal Code because, they claim, the terminals look like slot machines, they allow for single-button play, they are not pari-mutuel because the seed pools are house-banked and bettors do not wager on the same race, and the incorporation of elements of chance into certain historical racing terminals render them illegal gaming devices.

COMMISSION RESPONSE: The Commission respectfully disagrees. The proposed rules authorize pari-mutuel wagering on horse and greyhound racing through a Commission-approved historical racing system, and specifically prohibit wagers or terminals that violate the Constitution or the Penal Code. The Commission has not approved any specific terminals or wagers in the proposed rule. The rules include provisions requiring the Commission's review and approval of the specific terminals and functionalities that an association may wish to implement, so any proposed terminals that would violate state law will not be permitted. Further, It is the substance and operation of the terminals, rather than their outward appearance, that determines whether they are legal in Texas. Because the wagering authorized will

be "pari-mutuel wagering in connection with horse or greyhound races," it does not violate the Penal Code prohibitions. Because the outcome of each wager depends upon the skill and speed of the participants in connection with the displayed race, the terminals are not based on random chance and therefore are not slot machines or "lotteries" under the Constitution. The terminals are indeed pari-mutuel, as associations will take a certain percentage from each wager with the rest going into the pool for bettors to win. While the seed pool is initially funded by the association, it is not a "house-banked" system since the association does not stand to win these amounts back regardless of the outcome of the wagering; instead, the seed pool provides for minimum payouts as is already required in wagering on traditional horse racing. Likewise, carryover pools in traditional horse racing allow a bettor to win amounts that were paid into the pool by bettors on one or more previous races. Finally, because wagering on historical racing is "pari-mutuel wagering in connection with horse racing," it falls within the Penal Code's exception to the general prohibition on "gambling," and the terminals by which the wagers are placed are therefore no more "gambling devices" than existing totalisator equipment at the tracks.

COMMENT SUMMARY: One commenter claimed that historical racing terminals are a form of prohibited slot machine based on an analysis of the patent applications of one particular provider.

COMMISSION RESPONSE: The Commission respectfully disagrees. No association has brought forth any particular games or providers for consideration by the Commission. Only after a particular set of games has been proposed by an association can the Commission make a decision as to whether those games comply with Texas law and the rules bar approval of any games that do not so comply.

COMMENT SUMMARY: Several commenters claimed that the Commission's action in adopting these rules would constitute a usurpation of legislative authority to address what they view as an expansion of gambling.

COMMISSION RESPONSE: The Commission respectfully disagrees, as the Texas Racing Act authorizes the agency to "license and regulate all aspects of greyhound racing and horse racing in this state" and to "adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering." (Texas Racing Act, §§3.021(a) and 11.01(a)). The rules were proposed and are being adopted pursuant to that authority. There is no provision of the Act that would bar pari-mutuel wagering on historical racing.

COMMENT SUMMARY: Some commenters alleged that the Racing Act only authorizes live and simulcast racing and that, therefore, other types of racing are not permitted.

COMMISSION RESPONSE: While there are provisions in the Act that refer specifically to live and simulcast racing, there are no provisions in the Act that state or imply that only live and simulcast racing are authorized. Instead, the Act explicitly provides that the Commission has the authority to "license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering." (Texas Racing Act, §3.021(a)). Similarly, the exception for pari-mutuel wagering in connection with horse and greyhound racing under the Act does not state that the type of racing must be live or simulcast. The Commission's broad delegation of authority includes the authority to promulgate rules authorizing other forms of pari-mutuel wagering on horse or greyhound racing.

COMMENT SUMMARY: Several commenters stated that historical racing terminals would have a negative impact on charitable bingo operations in nearby areas. Likewise, one commenter indicated that the implementation of historical racing terminals would have a negative financial impact on the Kickapoo Nation's Lucky Eagle Casino in Eagle Pass.

COMMISSION RESPONSE: The Commission respectfully disagrees. No commenter provided more than anecdotal evidence of any potential detrimental impact. The only comment from a community that had actually experienced the effects of historical racing came from the Franklin-Simpson Chamber of Commerce in Kentucky. The Chamber wrote that the implementation of historical racing at Kentucky Downs had a positive net impact on the area's charitable bingo operations due to the influx of additional patrons. Further, while the Commission considered these comments in relation to the potential economic impact of the proposed rules, the Commission is required to consider the effect of its actions and rules on the state's agricultural, horse breeding, horse training, greyhound breeding and greyhound training industries. Rejecting the proposed rules because of some commenters' mere speculation that historical racing will negatively affect charitable bingo would be inconsistent with the Commission's overall statutory duties.

COMMENT SUMMARY: One commenter indicated that any provisions regarding gambling should include an accommodation for the Kickapoo Nation.

COMMISSION RESPONSE: The Texas Racing Act limits the Commission's jurisdiction to racetracks and to the regulation of racing, so the Commission is not able to extend any rights to the Kickapoo Nation or any other group that does not hold a racetrack license.

COMMENT SUMMARY: Several commenters and two petitions opposed the adoption of the rules because of a belief that historical racing terminals would prop up the greyhound racing industry, which they argue is inhumane.

COMMISSION RESPONSE: It is the policy of the State of Texas, as expressed through the Racing Act, that pari-mutuel greyhound racing is a permitted activity. Eliminating greyhound racing is not a policy objective of the Commission, nor can it be under the Racing Act, so this would not be an appropriate reason to reject or amend the historical racing rules.

COMMENT SUMMARY: Several legislators and legislative nominees stated that the decision to permit historical racing in Texas is a policy decision that the Legislature, not the Commission, should make.

COMMISSION RESPONSE: The Commission respectfully disagrees. Through the passage of the Texas Racing Act, the Legislature has already delegated to the Commission the broad authority to license and regulate all aspects of horse and greyhound racing. While historical racing is a modern development that may be more appealing to some of today's consumers, it is still just a form of pari-mutuel wagering on horse races encompassed by the Commission's existing authority.

COMMENT SUMMARY: Several commenters have cited Tex. Att'y Gen. Op. JM-1134 as authority for the proposition that the Commission lacks authority to adopt these rules, arguing that any delegation of authority to adopt the rules is unconstitutionally vague. In this opinion, the Attorney General's Office found that the predecessor to Texas Racing Act §3.021 was unconstitutional in its application to non-pari-mutuel racetracks due to

the Act's lack of guidelines as to how those racetracks should be regulated.

COMMISSION RESPONSE: The Commission respectfully disagrees. The Legislature has supplied guidelines for the regulation of pari-mutuel wagering and these guidelines are as applicable to wagering on historical racing as they are to wagering on live and simulcast racing. Article 11 of the Act prescribes the location of wagering, prohibits wagers over the internet or telephone, requires that computations be accomplished by state-of-the-art equipment, requires that the Commission adopt rules regarding information on each ticket, requires rules prohibiting minors from wagering, and describes how payments for tickets and vouchers may be claimed. Similarly, Article 6 provides for maximum takeouts for the tracks, breakage allocation, auditing requirements, and other specific details that apply to all types of racing and wagering on that racing, portions of which apply equally to historical racing. There is ample policy-making guidance to the Commission regarding the conduct of any and all types of wagering on horse and greyhound racing, including historical racing. The presence of some provisions that are specific to live or simulcast racing does not mean that the remainder of the Act is constitutionally insufficient to support the proposed rules.

COMMENT SUMMARY: Several commenters expressed support for the proposed rules on the basis that historical racing will provide additional revenues for purses for live races conducted in this state, which in turn will promote economic development, job growth and job retention in a variety of racing-related industries.

COMMISSION RESPONSE: The Commission agrees. Texas Racing Act §3.02(g) provides that the Commission, in adopting rules and in the supervision and conduct of racing, shall consider the effect of a proposed commission action on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry. The beneficial impact of historical racing on racing-related industries is desirable and is an appropriate factor for the Commission to consider.

COMMENT SUMMARY: One commenter suggested minor changes to two sections of the proposed rules. First, the commenter suggested correcting a technical error in §321.703(f) regarding the allocation of total breakage. Second, the commenter suggested two changes to §321.705 by adding a reference to §309.162 (relating to Management, Totalisator Companies, and Concessionaires Contracts) and modifying the application process to provide that final testing and certification of a historical racing system will be conducted after installation and as a condition precedent to final approval.

COMMISSION RESPONSE: The Commission agrees with these suggestions and has incorporated them into the adopted rules.

All comments, including any not specifically referenced herein, were fully considered by the Commission.

SUBCHAPTER A. MUTUEL OPERATIONS
DIVISION 1. GENERAL PROVISIONS

16 TAC §§321.5, 321.12, 321.13

The amendments are adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

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

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Mark Fenner
General Counsel
Texas Racing Commission
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For further information, please call: (512) 833-6699

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DIVISION 2. WAGERING INFORMATION AND RESULTS

16 TAC §§321.23, 321.25, 321.27

The amendments are adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

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

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SUBCHAPTER F. REGULATION OF HISTORICAL RACING

16 TAC §§321.701, 321.703, 321.705, 321.707, 321.709, 321.711, 321.713, 321.715, 321.717, 321.719

The rules are adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commis-

sion to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

§321.703. Historical Racing.

(a) A license to operate a pari-mutuel racetrack in this state held by an association that has been granted live race dates includes as a part of its privileges the privilege of conducting historical racing, subject to meeting the requirements of this subchapter and any other applicable Commission rules. Historical racing may only be conducted at times when wagering on live or simulcast racing is offered.

(b) Deductions from Association's Commission.

(1) A horse racing association may not begin conducting historical racing until it executes:

(A) a valid contract with the horsemen's representative authorized under §309.299 of this title (relating to Horsemen's Representative) that establishes the portion of the association's commission that will be set aside for purses; and

(B) a valid contract with the official breed registries that establishes the portion of the association's commission that will be set aside for breeder incentives.

(2) The contracts required by this subsection shall not specify how deductions for purses and breeder incentives will be allocated among the various breeds.

(3) If a contract executed under paragraph (1)(A) or (B) of this subsection is terminated, expires, or otherwise lapses, and is not immediately replaced by a new contract, an association conducting historical racing shall continue paying purse contributions and breeder incentives at the levels provided for in the expired, terminated or lapsed contract until a new contract is executed. The new contract shall address the treatment of the payments made during the period in which a contract was not in place.

(c) Allocation of Deductions.

(1) Each horse racing association shall transfer the amount set aside for purses from historical racing into the purse accounts maintained by breed by the horsemen's representative under the Act, §6.08(b)(3). The allocation of purse amounts among the breeds shall be determined by a separate written agreement between the horsemen's organization and the association. A copy of the executed written agreement must be submitted to the executive secretary. If at any time an agreement under this subsection is not in place, the association shall notify the executive secretary in writing and shall subsequently hold the amount set aside for purses from historical racing in escrow until an agreement is submitted.

(2) Each horse racing association shall transfer the amount set aside for breeder incentives from historical racing into accounts maintained by the breed registries. The allocation of breeder incentives among the breed registries shall be determined by a separate written agreement among the official state breed registries. A copy of the executed written agreement shall be submitted to the executive secretary and to the association. If at any time an agreement under this subsection is not in place, the association shall hold the amount set aside for breeder incentives from historical racing in escrow until an agreement is submitted.

(d) A greyhound racing association may not conduct historical racing unless it has a valid contract in place with the Texas Greyhound Association governing the portion of the association's commission that will be set aside for purses and breeder incentives. If a contract executed under this paragraph is terminated, expires, or otherwise lapses, and is not immediately replaced by a new contract, an association conducting historical racing shall continue paying purse contributions and breeder incentives at the levels provided for in the expired, terminated or lapsed contract until a new contract is executed. The new contract shall address the treatment of the payments made during the period in which a contract was not in place.

(e) To minimize the risk of business interruptions, the contracts required by subsections (b) and (d) of this section shall specify a process by which the parties will resolve disputes about the terms of any successor contracts.

(f) Breakage from historical racing shall be allocated pursuant to this subsection. The use and distribution of the amounts transferred under this subsection are subject to audit by the Commission.

(1) Two percent of the breakage derived from historical racing by a horse racing association shall be allocated to the equine research account under Subchapter F, Chapter 88, Education Code. Pursuant to §6.08(h) of the Act, the remaining 98 percent of the breakage derived from historical racing constitutes "total breakage." The allocation among the breed registries of breakage derived from historical racing shall be determined within the written agreement described in subsection (c)(2) of this section. An association shall transfer 80 percent of the total breakage into accounts maintained by the breed registries to be paid out as follows:

(A) 40 percent is allocated to the owners of the accredited Texas-bred horses that finish first, second or third;

(B) 40 percent is allocated to the breeders of the accredited Texas-bred horses that finish first, second or third; and

(C) 20 percent is allocated to the owner of the stallion standing in this state at the time of conception whose Texas-bred get finish first, second or third.

(2) Fifty percent of the breakage derived from historical racing by a greyhound racing association shall be shall be transferred by the association into accounts maintained by the Texas Greyhound Association. Of that portion of the breakage, one-half is to be used in stakes races. The breakage received by the Texas Greyhound Association under this paragraph is subject to the grant program requirements §303.101(b) of this title (relating to Greyhound Breed Registry).

(g) An association seeking to conduct historical racing shall submit the form of the contracts required by subsection (b) or (d) of this section to the executive secretary for review and approval. The association shall provide a copy of the executed contracts required by subsection (b) or (d) of this section to the Commission.

§321.705. Request to Conduct Historical Racing.

(a) In addition to the requirements of §309.162 of this title (relating to Management, Totalisator Companies, and Concessionaires Contracts), §321.15 of this title (relating to License to Provide Totalisator Services) and §321.101 of this title (relating to Totalisator Requirements and Operating Environment), an association must submit a written request to the Commission to receive approval to conduct historical racing, to offer new types of wagers, or to change the presentation or appearance of previously-approved wager types.

(1) The request must identify the types of wagers that will be offered, the presentation and appearance of the wagers, the types and numbers of historical racing terminals that the association will operate, the area(s) within the association's enclosure where the terminals will be placed, and the date that operations will begin. The request may identify the number of historical racing terminals to be installed as a range, rather than a specific number.

(2) The request must be accompanied by a certification from an independent testing laboratory verifying that the proposed historical racing totalisator system and the proposed wagers meets jurisdictional rules for historical racing. When all other requirements for conducting historical racing have been met, the Commission shall issue a conditional approval to allow an association to install the historical racing totalisator system. An independent testing laboratory must test the installed system to ensure its compliance with the Commission's rules and technical standards, and the association shall submit the results of this testing and the associated report to the agency to obtain final approval to operate the historical racing totalisator system.

(3) The Commission may require the association to submit additional information if the Commission determines that such information is necessary to effectively evaluate the request.

(b) In considering whether or not to approve a request to conduct historical racing, the Commission shall consider, but is not limited to, the following factors:

(1) whether the historical racing totalisator system and the proposed wagers comply with the applicable requirements for pari-mutuel wagering in connection with horse and greyhound racing as set forth in these rules and the Texas Racing Act;

(2) the regulatory compliance and conduct of the association, the financial stability of the association and the effect that allowing pari-mutuel wagering on historical races will have on the economic viability of the association;

(3) the impact of historical racing on purses and breeder incentives; and

(4) the public interest that will be served by historical racing.

(c) The Commission shall not approve any wager that would violate the prohibitions in Article III, Section 47 of the Texas Constitution.

(d) An association conducting historical racing shall submit a request for approval to the executive secretary before:

(1) updating the software for the historical racing totalisator system; or

(2) installing new equipment to be operated as part of the historical racing totalisator system that was not included in the original request under subsection (a) of this section.

(e) The executive secretary shall provide a written response to a request under subsection (d) of this section within ten (10) days. If the executive secretary does not approve the request after ten (10) days, the executive secretary shall provide a written response identifying any unresolved issues that are preventing approval. The executive secretary may request a new certification and report pursuant to subsection (a)(2) of this section to evaluate a change requested under subsection (d) of this section. The executive secretary shall notify the association if a new report and certification will be required within ten (10) days of receiving the request under subsection (d) of this section. If a new report and certification are requested, the executive secretary shall provide a written response to a request under subsection (d) of this section within ten (10) days of receiving the new report and certification.

(f) The executive secretary may require an association to provide access to inspect and test a historical racing totalisator system for compliance with commission rules at any time.

(g) The Commission shall not limit an association's ability to conduct historical racing based on the brand of historical racing terminal, as long as the totalisator system meets the requirements of the subchapter and any other applicable commission rules.

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

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Mark Fenner
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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 163. LICENSURE

22 TAC §163.6

The Texas Medical Board (Board) adopts an amendment to §163.6, concerning Examinations Accepted for Licensure, without changes to the proposed text as published in the July 25, 2014, issue of the *Texas Register* (39 TexReg 5712). The rule will not be republished.

The amendment to §163.6 eliminates an incorrect reference in subsection (f) to another part of the rule.

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

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Mari Robinson, J.D.
Executive Director
Texas Medical Board
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CHAPTER 182. USE OF EXPERTS

22 TAC §182.8

The Texas Medical Board (Board) adopts an amendment to §182.8, concerning Expert Physician Reviewers, without

changes to the proposed text as published in the July 25, 2014, issue of the *Texas Register* (39 TexReg 5712). The rule will not be republished.

The amendment to §182.8 adds language to subsection (c), relating to Expert Reviewers' Report, in the form of a new paragraph (3), requiring that an expert report must include notice to the respondent stating that the report is investigative information and is privileged and confidential under §164.007(c) of the Medical Practice Act. This will prevent its use or dissemination outside the informal settlement conference process and make the report inadmissible in civil, judicial, or administrative proceedings. Release of the report to the respondent shall not constitute a waiver of the privileged and confidential status of the report, in accordance with §164.003 and §164.007 of the Medical Practice Act and Board Rule 179. The amendment also adds new subsection (d), providing that such reports are investigative information and privileged and confidential, in accordance with §164.007(c), Texas Occupations Code; and investigative reports by a consulting expert as defined by Texas Rules of Civil Procedure §192.7(d).

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §§154.0561, 154.0568, 164.003, and 164.007, Texas Occupations Code.

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

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CHAPTER 185. PHYSICIAN ASSISTANTS

22 TAC §185.7, §185.28

The Texas Medical Board (Board) adopts amendments to §185.7, concerning Temporary License; and §185.28, concerning Retired License, without changes to the proposed text as published in the March 28, 2014, issue of the *Texas Register* (39 TexReg 2234). The rules will not be republished.

The rules were proposed and adopted by the Texas Physician Assistant Board and approved by the Texas Medical Board.

The amendment to §185.7 adds language requiring that in order to be eligible for a temporary license, an applicant must be supervised by a physician who holds an active, unrestricted license as a physician in Texas; has not been the subject of a disciplinary order, unless the order was administrative in nature; and is not a relative or family member of the applicant. The amendment further requires that the applicant present written verification from the supervising physician that the physician will supervise the physician assistant according to rules adopted by the board; and retain professional and legal responsibility for the care rendered by the physician assistant.

The amendment to §185.28 adds language providing an emeritus status for retired physician assistants who meet specific criteria.

The Physician Assistant Board received public written comments regarding §185.7, from the Texas Medical Association (TMA). No one appeared at the public hearing held on August 1, 2014, or the public hearing held during the Texas Medical Board meeting held on August 29, 2014.

TMA opposed the amendments adding §185.7(c)(1)(B), stating that requiring that a supervising physician never to have been the subject of a non-administrative disciplinary order is not an appropriate way to measure the physician's current basic competency to supervise physician assistants holding a temporary license. TMA opposed the amendment in any form, but in the alternative proposed that the Board limit the rule's language regarding ineligibility based upon the supervisory physician's past non-administrative disciplinary orders to ones that occurred within the past year. TMA additionally opposed §185.7(c)(1)(C), stating that the restriction is not found in any statute governing physician assistants, that physicians should be able to supervise physician assistant temporary license holders who are relatives or family members as both are licensed professionals, and noting that neither "relative" nor "family member" is defined.

Physician Assistant Board Response: The Board believes that requiring a supervising physician to not have been the subject of non-administrative disciplinary orders is an appropriate way to measure the supervising physician's basic competency to act in a supervisory role for a physician assistant temporary license holder. The Board declines to adopt the alternative language offered by TMA. Further, the Board believes that requiring a supervising physician to have no relationship to the physician assistant with temporary licensure is appropriate in order to ensure fair, unbiased and accurate reporting of information to the Board by the supervising physician regarding the physician assistant temporary license holder. Additionally, the Board believes that language "relatives or family members" is clear and unambiguous.

No comments were received regarding §185.28.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §204.101, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

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CHAPTER 187. PROCEDURAL RULES
SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

22 TAC §187.5

The Texas Medical Board (Board) adopts an amendment to §187.5, concerning National Practitioner Databank (NPDB), without changes to the proposed text as published in the July 25, 2014, issue of the *Texas Register* (39 TexReg 5714). The rule will not be republished.

The amendment to §187.5 deletes language specifying the types of actions that are reportable and adds language that provides that the board will report according to NPDB guidelines and applicable federal law.

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by Chapter 164, Texas Occupations Code.

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

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CHAPTER 195. PAIN MANAGEMENT CLINICS

22 TAC §195.2

The Texas Medical Board (Board) adopts an amendment to §195.2, concerning Certification of Pain Management Clinics, without changes to the proposed text as published in the July 25, 2014, issue of the *Texas Register* (39 TexReg 5714). The rule will not be republished.

The amendment to §195.2 corrects the citation to provisions under the Texas Occupations Code related to the regulation of pain management clinics.

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §168.051 of the Texas Occupations Code.

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

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 421. HEALTH CARE INFORMATION

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§421.1, 421.2, 421.5 and 421.8, concerning the collection and release of hospital discharge data; amendments to §§421.62, 421.67 and 421.68, concerning the collection and release of outpatient surgical and radiological procedures at hospitals and ambulatory surgical centers; and new §§421.71 - 421.78, concerning the collection and release of hospital outpatient emergency room data. New §421.71 is adopted with changes to the proposed text as published in the May 2, 2014, issue of the *Texas Register* (39 TexReg 3553). Amended §§421.1, 421.2, 421.5, 421.8, 421.62, 421.67 and 421.68 and new §§421.72 - 421.78 are adopted without changes, and therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments and new sections are necessary to comply with Health and Safety Code, Chapter 108, Senate Bill 7 (SB), §7.07(b) (82nd Legislature, First Called Session, 2011), which mandated the repeal of Health and Safety Code, §108.002(18), §108.0025, and §108.009(c) regarding the rural provider definition and requirements for rural providers no sooner than September 1, 2014, and Senate Bill 1 (SB 1), Article II, Department of State Health Services, §93 (83rd Legislature, Regular Session,

2013) which instructs the department to collect data on patients seen in hospital emergency departments.

Collection of data from rural healthcare providers and from hospital emergency departments will provide additional information regarding gaps in the utilization and quality of care being provided in rural hospitals and ambulatory surgery centers and in all hospital emergency departments. The emergency department data will provide legislators and policymakers a better understanding on what services and which populations are being served through the emergency departments at hospitals throughout the state.

SECTION-BY-SECTION SUMMARY

Section 421.1, the term in paragraph (40) "Rural Provider" is deleted, and the remaining definitions are renumbered. Also, punctuation was added at the end of paragraph (12).

Section 421.2, Collection of Hospital Discharge Data, subsection (a), the phrase "as rural providers" is deleted from the last sentence.

Section 421.5, Exemptions from Filing Requirements, subsection (a)(1), the first sentence is amended by deleting the phrase "a rural provider or other" and inserting the word "an." Also, the sentence is amended by replacing the phrase "is a rural provider or other" with "shall be considered an" exempted provider. The second sentence is amended by changing it from "The department shall make a determination of which hospitals are entitled to this exemption at least annually and shall notify qualifying hospitals by publication in the *Texas Register* and by regular United States mail" to the following "The department shall make a determination of which hospitals are entitled to this exemption and shall notify hospitals by email or by regular United States mail." The third sentence is deleted. The fourth sentence deletes the phrase "based upon the most current data issued by the United States Bureau of the Census or changes in hospital ownership or management relationships." The fifth sentence replaces the phrase "rural providers or as other" with the word "an." Subsection (c) is amended by deleting the phrase "entitlement to an" from the sentence.

Section 421.8, Hospital Discharge Data Release, subsection (d), the second sentence is amended by replacing "in an aggregate form, without uniform patient, physician or other health professional identifiers, public use data relating to hospitals described in the Health and Safety Code, §108.0025(1) that are not rural providers because they do not meet the requirements of §108.0025(2)" with the following phrase "public use data that has the identities masked relating to hospitals that are low volume providers to protect the confidentiality and privacy of the patients, physicians and other health professionals."

Section 421.62, Collection of Hospital Outpatient and Ambulatory Surgical Center Data, subsection (a), second sentence, the reference to"§108.0025" is replaced by "Chapter 108."

Section 421.67, Event Files--Records, Data Fields and Codes, subsection (d), two data elements are added to the list of required data elements submitted on the modified ANSI 837 Institutional claim format: (38) "Point of Origin (Source of Admission) (Hospital Emergency Department Visits only)" and (39) "Patient Status (Hospital Emergency Department Visits only)." The second sentence in subsection (h) is deleted.

Section 421.68, Event Data Release, subsection (g)(10), the following data elements were added to the list of data elements included in the public use data file: (YYY) "Point of Origin (Source of Admission) (Hospital Emergency Department Visits only)" and (ZZZ) "Patient Status (Hospital Emergency Department Visits only)." The last sentence in subsection (h) is deleted.

Section 421.71, defines the terms necessary for clarification of required processes and procedures to fulfill the legislative mandate.

Section 421.72, Collection of Outpatient Emergency Visit Data, establishes which facilities and which patients within those facilities are required to submit the required data elements to the department.

Section 421.73, Schedule for Filing Event Files, establishes the beginning date for filing of all emergency visit event data and references the schedule listed in §421.63(a)(1) - (4) of this title (relating to Schedules for Filing Event Files) concerning the Collection and Release of Outpatient Surgical and Radiological Procedures at Hospitals and Ambulatory Surgical Centers. The data will be submitted, processed and certified using the same outpatient data system; therefore the schedules will be the same. The effective date of the rule will be 90 calendar days after the rule is published in the *Texas Register.*

Section 421.74, Instructions for Filing Event Files, establishes the instructions for filing event files by referencing §421.64(a) and (b) of this title (relating to Instructions for Filing Event Files) concerning the Collection and Release of Outpatient Surgical and Radiological Procedures at Hospitals and Ambulatory Surgical Centers. The data will be reported using the same system, therefore the instructions for filing event files is the same.

Section 421.75, Acceptance of Event Files and Correction of Data Content Errors, establishes the criteria for event file acceptance and correction of data that appear to be in error by referencing §421.65 of this title (relating to Acceptance of Event Files and Correction of Data Content Errors) concerning the Collection and Release of Outpatient Surgical and Radiological Procedures at Hospitals and Ambulatory Surgical Centers, which will utilize the same process.

Section 421.76, Certification of Compiled Event Data, establishes the process of certifying the accuracy and completeness of the emergency visit event data by referencing §421.66(a) - (f) of this title (relating to Certification of Compiled Event Data) concerning the Collection and Release of Outpatient Surgical and Radiological Procedures at Hospitals and Ambulatory Surgical Centers, which will utilize the same process.

Section 421.77, Event Files--Records, Data Fields and Codes, establishes the event file, records data fields and codes to be used for emergency visit event data submissions. The file format, data field names, and the emergency visit revenue codes are listed. A statement regarding the effective date of the rule is 90 calendar days after the rule is published in the *Texas Register.*

Section 421.78, Outpatient Emergency Visit Event Data Release, establishes guidelines for the department regarding the release of the data collected under this subchapter. The section includes: language regarding the submitted records and public requests for data; the creation of codes and identifiers to protect patient and physician confidentiality; language that data use agreements are to be followed; language requiring the department to implement the confidentiality provisions of Health and Safety Code, Chapter 108; language to clarify that the data files are not to be considered provider quality data as specified in Health and Safety Code, §108.010; language specifying a

list of modifications to be made to the outpatient emergency visit event public use data file to protect patient and physician confidentiality and privacy and a list of the data elements to be included in data file; language establishing criteria for the release of the public use data files; and language establishing criteria for release of outpatient emergency visit event research data file.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were associations, and/or groups, including the following: the Texas Academy of Physician Assistants, the Texas Hospital Association, and the Texas Organization of Rural and Community Hospitals. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments. The comments were in favor of rules.

Comment: Concerning the definition of "Other health professional" in new §421.71(34), one commenter requested that the term "physician assistants" be specifically named in the definition.

Response: The commission agrees and has added the term "physicians assistants" to the last sentence of the definition, "Other health professional" as follows: The term encompasses persons licensed under various Texas practice statutes, such as psychologists, chiropractors, dentists, nurse practitioners, nurse midwives, "physicians assistants," and podiatrists who are authorized by the facilities to examine, observe or treat patients.

Comment: Concerning the proposed preamble, one commenter expressed concern about the timing of the proposed rules, due to a change in the mandated delay of the International Classification of Diseases standard diagnostic codes, ICD-10 codes, coding for the United States healthcare system, to October 1, 2015.

Response: The commission agrees with the commenter. The commission and department will continue to monitor the federal requirements on facilities especially that of ICD-10 coding and will notify the healthcare facilities in advance as required by Health and Safety Code, Chapter 108 of changes and will modify schedules or processes to allow for facilities to meet those federal requirements and the state requirements. The commission and the department anticipate the proposed rules will be adopted and published prior to October 1, 2014, and implementing the processes to allow for the collection of data from all hospitals and ambulatory surgery centers, beginning with services that occur on and after January 1, 2015. No change was made as a result of the comment.

Comment: Concerning the rules in general, two commenters recommended the department should be lenient regarding issuing penalties for rural facilities that make a good faith effort.

Response: The commission is intent on collecting the required data as legislatively mandated and will make reasonable efforts to assist the facilities in submitting, correcting and certifying that data. The department will consider each situation on a case by case basis. No changes were made to the rule as a result of this comment.

Comment: One commenter recommended the department stagger the implementation deadline for rural hospitals and allow them to submit inpatient data first then require outpatient and emergency department data at a later time. The commenter also stated that the same hospital may choose to submit all their claims at the same time.

Response: The timelines for submission of data were not addressed in the proposed amended section or the new sections. Modifying the timelines would be considered a substantive change in the rules and would require republishing the rules. Provided that the adoption of these proposed amendments occurs and is posted in the *Texas Register* prior to October 1, 2014, the first required data submission deadline of data would be June 1, 2015. This is a time period of 8 months for the rural facilities to prepare and test their data submission process. Some of these rural facilities have submitted their data to the department under earlier projects not directly connected with department. Also, if the department were to allow the facilities that option, then the data reported by the rural facilities will be incomparable or less useful over a longer period of time. Therefore, the commission disagrees with the commenter's request to allow hospitals the option to submit or not submit the required data or to stagger the data implementation requirements. No change was made as a result of the comment.

Comment: Concerning the rules in general, one commenter recommended that the department continues the practice of protecting patient identities by suppressing selected data elements.

Response: The commission agrees and will continue to protect patient confidentiality as required by Health and Safety Code, §108.013. No change was made as a result of the comment.

Comment: Concerning the rules in general, one commenter recommended the department continue the practice of not releasing hospital quality reports until at least one year of data is available.

Response: The commission agrees that the quality reports will be based on at least one year of data. To this point all quality reports produced by the Texas Health Care Information Council and the department have produced were based on one or more years of data. No change was made as a result of the comment.

LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

SUBCHAPTER A. COLLECTION AND RELEASE OF HOSPITAL DISCHARGE DATA

25 TAC §§421.1, 421.2, 421.5, 421.8

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §§108.006, 108.009, 108.010, 108.011 and 108.013, which require the Executive Commissioner to adopt rules necessary to carry out Chapter 108 including rules on data collection requirements, to prescribe the process of data submission, to implement a methodology to collect and disseminate data, including hospitals emergency department data, reflecting provider quality, to specify data elements to be required for submission to the department and which data elements are to be released in an public use data files; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Exec-

utive Commissioner to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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

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Department of State Health Services
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For further information, please call: (512) 776-6972

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SUBCHAPTER D. COLLECTION AND RELEASE OF OUTPATIENT SURGICAL AND RADIOLOGICAL PROCEDURES AT HOSPITALS AND AMBULATORY SURGICAL CENTERS

25 TAC §§421.62, 421.67, 421.68

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §§108.006, 108.009, 108.010, 108.011 and 108.013, which require the Executive Commissioner to adopt rules necessary to carry out Chapter 108 including rules on data collection requirements, to prescribe the process of data submission, to implement a methodology to collect and disseminate data, including hospitals emergency department data, reflecting provider quality, to specify data elements to be required for submission to the department and which data elements are to be released in an public use data files; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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

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SUBCHAPTER E. COLLECTION AND RELEASE OF HOSPITAL OUTPATIENT EMERGENCY ROOM DATA

25 TAC §§421.71 - 421.78

STATUTORY AUTHORITY

The new sections are authorized by Health and Safety Code, §§108.006, 108.009, 108.010, 108.011 and 108.013, which require the Executive Commissioner to adopt rules necessary to carry out Chapter 108 including rules on data collection requirements, to prescribe the process of data submission, to implement a methodology to collect and disseminate data, including hospitals emergency department data, reflecting provider quality, to specify data elements to be required for submission to the department and which data elements are to be released in an public use data files; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§421.71. Definitions.

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

(1) Accurate and Consistent Data--Data that has been edited by DSHS and subjected to provider validation and certification.

(2) ANSI--American National Standards Institute.

(3) ANSI 837 Institutional Guide--American National Standards Institute, Accredited Standards Committee X12N, 837 Health Care Institutional Claim Implementation Guide.

(4) APC--Ambulatory Payment Classification.

(5) APG--Ambulatory Patient Group (APG)--A prospective payment system (PPS) for hospital-based outpatient care developed by 3M™. APGs provide information regarding the kinds and amounts of resources utilized in an outpatient visit and classify patients with similar clinical characteristics.

(6) Audit--An electronic standardized process developed and implemented by DSHS to identify potential errors and mistakes in file structure format or data element content by reviewing data fields for the presence or absence of data and the accuracy and appropriateness of data.

(7) Certification File--One or more electronic files (may include reports concerning the data and its compilation process) compiled by DSHS that contain one record for each patient event which has at least one procedure covered in the revenue codes specified in §421.77(e) of this title (relating to Event Files--Records, Data Fields and Codes) submitted for each facility under this subchapter during the reporting quarter and may contain one record for any patient event occurring during one prior reporting quarter for whom additional event claims have been received.

(8) Certification Process--The process by which a provider confirms the accuracy and completeness of the certification file required to produce the public use data file as specified in §421.76 of this title (relating to Certification of Compiled Event Data).

(9) Charge--The amount billed by a provider for specific procedures or services provided to a patient before any adjustment for contractual allowances, government mandated fee schedules or write-

offs for charity care, bad debt or administrative courtesy. The term does not include co-payments charged to health maintenance organization enrollees by providers paid by capitation or salary in a health maintenance organization.

(10) Clinical Classifications Software--A classification system that groups diagnoses and procedures into a limited number of clinically meaningful categories developed at the United States Department of Health and Human Services, Agency for Healthcare Research and Quality (AHRQ).

(11) Comments--The notes or explanations submitted by the facilities, physicians or other health professionals concerning the provider quality reports or the encounter data for public use as described in the Texas Health and Safety Code, §108.010(c) and (e) and §108.011(g) respectively.

(12) CRG--Clinical Risk Grouping software which classifies individuals into mutually exclusive categories and, using claims data, assigns the patient to a severity level if they have a chronic health condition. Developed by 3M™ Corporation.

(13) Data format--The sequence or location of data elements in an electronic record according to prescribed specifications.

(14) DSHS--Department of State Health Services, the successor state agency to the Texas Health Care Information Council and the Texas Department of Health.

(15) EDI--Electronic Data Interchange--A method of sending data electronically from one computer to another. EDI helps providers and payers maintain a flow of vital information by enabling the transmission of claims and managed care transactions.

(16) Electronic Filing--The submission of computer records in machine readable form by modem transfer from one computer to another (EDI) or by recording the records on a nine track magnetic tape, computer diskette or other magnetic media acceptable to DSHS.

(17) Emergency Department--Department or room within a hospital or health care facility as determined by federal or state law for the provision of emergency health care services.

(18) Emergency Visit Patient or patient--For the purposes of this subchapter a patient who receives services in the emergency department or emergency room of the health care facility. Emergency Visit Patients include patients who receive one or more services covered by the revenue codes specified in §421.77(e) of this title, which may occur in the emergency department or emergency room of the healthcare facility.

(19) ESRD--End Stage Renal Disease.

(20) Error--Data submitted on an event file which are not consistent with the format and data standards contained in this subchapter or with auditing criteria established by DSHS.

(21) Ethnicity--The status of patients relative to Hispanic background. Facilities shall report this data element according to the following ethnic types: Hispanic or Non-Hispanic.

(22) Event--The medical screening examination, triage, observation, diagnosis or treatment of a patient within the authority of a facility that occurs as result of an outpatient emergency visit.

(23) Event claim--A set of computer records as specified in §421.77 of this title relating to a specific patient. "Event claim" corresponds to the ANSI 837 Institutional Guide term, "Transaction set."

(24) Event file--A computer file as defined in §421.77 of this title periodically submitted on or on behalf of a facility in compliance with the provisions of this subchapter. "Event File" that corresponds to the ANSI 837 Institutional Guide terms, "Communication Envelope" or "Interchange Envelope."

(25) Facility--For the purposes of this subchapter, a facility is a hospital required to report under the Health and Safety Code, Chapter 108 and this subchapter.

(26) Facility Type Indicators--An indicator that provides information to the data user as to the type of facility or the primary health services delivered at that hospital (e.g., Acute Care Hospital, Children's Hospital, or Cancer Hospital, etc.). A facility may have more than one indicator.

(27) Geographic identifiers--A set of codes indicating the health service region and county in which the patient resides.

(28) HCPCS--Healthcare Common Procedure Coding System of the Centers for Medicare and Medicaid Services. This includes the "Current Procedural Terminology" (CPT) codes (maintained by the "American Medical Association" (AMA)), which are "Level 1" HCPCS codes.

(29) Hospital--A public, for-profit, or nonprofit institution licensed as a general or special hospital as defined in §133.2(21) of this title (relating to Definitions), or a hospital owned by the state.

(30) ICD--International Classification of Disease.

(31) Inpatient--A patient, including a newborn infant, who is formally admitted to the inpatient service of a hospital and who is subsequently discharged, regardless of status or disposition. Inpatients include patients admitted to medical/surgical, intensive care, nursery, subacute, skilled nursing, long-term, psychiatric, substance abuse, physical rehabilitation and all other types of hospital units.

(32) IRB--Institutional Review Board--composed of DSHS' appointees or agents who have experience and expertise in ethics, patient confidentiality, and health care data who review and approve or disapprove requests for data or information other than the outpatient emergency visit event public use data.

(33) Operating or Other Physician--The "physician" licensed by the Texas Medical Board or "other health professional" licensed by the State of Texas who performed the surgical or radiological procedure most closely related to the principal diagnosis.

(34) Other health professional--A person licensed to provide health care services other than a physician. "Other health professional" is an individual other than a physician who provides diagnostic or therapeutic procedures to patients. The term encompasses persons licensed under various Texas practice statutes, such as psychologists, chiropractors, dentists, nurse practitioners, nurse midwives, physicians assistants and podiatrists who are authorized by the facilities to examine, observe or treat patients.

(35) Other Provider--For the purposes of reporting on the modified ANSI 837 Institutional Guide, the physician, other health professional or facility as reported on a claim, who performed a secondary surgical or a primary or secondary radiological procedure on the patient for the event, if they are not reported as the operating or other physician or the facility. In the case where a substitute provider (locum tenens) is used, that physician or other health professional shall be submitted as specified in this subchapter.

(36) Outpatient Emergency Visit--For the purposes of this subchapter, events associated with hospital services in an emergency department or emergency room.

(37) Patient account number--A number assigned to each patient by the facility, which appears on each computer record in a patient event claim. This number is not consistent for a given patient from one facility to the next, or from one admission to the next in the same facility. DSHS will delete or encrypt this number to protect patient confidentiality prior to release of data.

(38) Physician--An individual licensed under the laws of this state to practice medicine under the Medical Practice Act, Occupations Code, Chapter 151 et seq.

(39) Provider--For the purposes of this subchapter, a physician or facility.

(40) Public use data file--For the purposes of this subchapter, a data file composed of encounter or event claims which have been altered by the deletion, encryption or other modification of data fields to protect patient and physician confidentiality and to satisfy other restrictions on the release of data imposed by statute.

(41) Race--A division of patients according to traits that are transmissible by descent and sufficient to characterize them as distinctly human types. Facilities shall report this data element according to the following racial types: American Indian, Eskimo, or Aleut; Asian or Pacific Islander; Black; White; or Other.

(42) Required minimum data set--The list of data elements for which facilities may submit an event claim for each patient event occurring in the facility. The required minimum data sets are specified in §421.77(d) of this title. This list does not include all the data elements that are required by the modified ANSI 837 Institutional Guide to submit an acceptable event file. For example: Interchange Control Headers and Trailers, Functional Group Headers and Trailers, Transaction Set Headers and Trailers and Qualifying Codes (which identify or qualify subsequent data elements).

(43) Research data file--A customized data file, which may include the data elements in the public use file and may include data elements other than the required minimum data set submitted to DSHS, except those data elements that could reasonably identify a patient or physician, except as authorized by law.

(44) Submission--The transfer of a set of computer records as specified in §421.77 of this title that constitutes the event file for one or more reporting hospitals under this subchapter.

(45) Submitter--The person or organization, which physically prepares an event file for one or more facilities and submits them under this subchapter. A submitter may be a facility or an agent designated by a facility or its owner.

(46) THCIC Identification Number--A string of six characters assigned by DSHS to identify facilities for reporting and tracking purposes. For a facility operating multiple facility locations under one license number and duplicating services at those locations, the department will assign a distinguishable identifier for each separate facility location under one license number. The relationship of the identifier to the name and license number of the facility is public information.

(47) Uniform patient identifier--A unique identifier assigned by DSHS to an individual patient and composed of numeric, alpha, or alphanumeric characters, which remains constant across facilities and patient events. The relationship of the identifier to the patient-specific data elements used to assign it is confidential.

(48) Uniform physician identifier--A unique identifier assigned by DSHS to a physician or other health professional who is reported as attending, operating or other provider providing health care services or treating a patient in a facility and which remains constant across facilities. The relationship of the identifier to the physician-specific data elements used to assign it is confidential. The uniform physician identifier shall consist of alphanumeric characters.

(49) Universal Resource Locator (URL)--A specific set of ordered characters to identify a unique resource location (address) on the Internet or World Wide Web.

(50) Validation--The process by which a provider verifies the accuracy and completeness of data and corrects any errors identified before certification.

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

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 2. SPORTS AND EVENTS TRUST FUND

SUBCHAPTER A. MAJOR EVENTS TRUST FUND

34 TAC §§2.100 - 2.104, 2.106, 2.107

The Comptroller of Public Accounts adopts amendments to §2.102, concerning request to establish a trust fund, without changes to the proposed text as published in the March 7, 2014, issue of the *Texas Register* (39 TexReg 1650) and will not be republished. The comptroller adopts amendments to §2.100, concerning definitions, §2.101, concerning eligibility, §2.103, concerning reporting, and §2.104, concerning reimbursement, new §2.106, concerning event support contracts, and new §2.107, concerning allowed and disallowed costs, with changes to the proposed text as published in the March 7, 2014, issue of the *Texas Register* (39 TexReg 1650) and they will be republished. The amendments are deemed necessary to implement provisions of VTCS, Article 5190.14, Section 5A, as amended by Senate Bill 1678, 83rd Legislature; Senate Bill 398, 83rd Legislature, 2013; and Senate Bill 309, 82nd Legislature, 2011.

Amendments to §2.102(f) provide that a request for participation, including a request for determination of the amount of incremental increase in tax receipts must be submitted not earlier than one year and not later than 45 days before the date the event begins.

The agency received comments on the proposed amendments from The City of Fort Worth, The Honorable Annise D. Parker, Mayor, City of Houston, The Honorable Ed Emmett, Harris County Judge, Hillco Partners, The City of El Paso, and Daniel

A. Rascher, Ph.D. with Sports Economics. Their comments and the agency's responses are as follows.

The City of Fort Worth commented that any amendments to §2.100(7) should reflect the entire definition of "event" as that term is defined in Article 5190.14, Section 5A(a)(4) of Vernon's Annotated Revised Civil Statutes of the State of Texas.

The agency has addressed the comment by changing the language in paragraph (7) to reflect the entire definition of "event" by citing the section within the statute in which "event" is defined.

The Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge and Hillco Partners commented that the proposed amendment to §2.100(16) deleted a specific list of site selection organizations and replace it with a reference to the meaning under the Article 5190.14, Section 5A(a)(5). However, there are ambiguities in the Act which these regulations should expressly clarify by adding, "including any member, member conference, affiliate, or other person sanctioned by any of the entities listed in Article 5190.14, Section 5A(a)(5)."

The agency responds that the term "site selection organization" in paragraph (16) is defined by the Article 5190.14, Section 5A(a)(5), and the changes suggested would broaden the definition beyond the statutory definition.

Hillco Partners commented that the proposed definition of "proof of payment" in §2.100(13), should be broadened to include other forms of proof of payment (such as copies of cancelled checks, wire transfer of funds, receipts, etc.) that are generally accepted by state agencies.

The agency acknowledges the validity of the comment and clarifies the definition of "proof of payment" in paragraph (13) to include any official document showing the transfer of funds from the requestor to the payee.

The Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge and Hillco Partners commented that the proposed definition of "publicly owned property" in §2.100(14) should be should be deleted and the ordinary meaning of "publicly owned" under Texas law should apply.

The agency acknowledges the validity of the comment and agrees that there is a common understanding of publicly owned property and has stricken the definition for that reason.

The City of Fort Worth commented that in regard to the proposed definition of "significantly lower" in §2.100(16), (which is now paragraph (15) due to the deletion of paragraph (14)), the city requests that the comptroller re-evaluate this definition and increase the percentage to 25% or greater.

The agency acknowledges the validity of the comment and changes the definition of "significantly lower" in renumbered paragraph (15) to accommodate the request to increase the percentage to 25% or greater.

A grammatical error in §2.100(3) which erroneously defined "direct costs" instead of "direct cost" has been corrected.

The City of Fort Worth commented that amending §2.101 to include the statutory language set forth in Article 5190.14, Section 5A(a)(a-2) is necessary to fully implement Senate Bill 1678.

The agency acknowledges the validity of the comment and has addressed it by expressly allowing statutory exceptions to the eligibility in subsection (a)(1).

The City of Fort Worth and the City of El Paso commented that amendment to §2.101(b) could inadvertently punish a municipality that is deemed ineligible for the Major Events Trust from subsequently applying for the Events Trust fund. They propose language that would allow for a secondary application under the Events Trust Fund program in instances where the comptroller has deemed an event ineligible under the Major Events Trust Fund program.

The agency acknowledges the validity of the comments and adds additional language to subsection (b) to clarify that nothing prohibits the submission of an application for the Events Trust Fund program for events that the comptroller has deemed ineligible for the Major Events Trust Fund program.

The Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge and Hillco Partners commented in regard to §2.102(h) that within the 30-day period for determination of incremental increase in tax receipts, the comptroller should also make a determination of the estimated number of attendees at the event who are not Texas residents, along with the source for such numbers (to the extent different from the certified estimate provided by the requestor).

The agency responds that the suggested change is not necessary to fulfill Article 5190.14, Section 5A.

The City of Fort Worth, the City of El Paso, the Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge, Hillco Partners and Daniel A. Rascher, Ph.D. all commented regarding the amendment to §2.103. All of the comments requested that the proposed 14 day deadline in subsection (a)(1) for the submission of an attendance certification be extended.

The agency acknowledges the validity of the comments and changes the language in subsection (a)(1), to allow for additional time. In relation to additional time being added to subsection (a), additional language was added to §2.104(k) based on administrative necessity.

The City of Fort Worth commented that while they support the proposed amendment to §2.104(e)(7), they believe that the language may conflict with §2.104(h)(2) concerning cost invoices belonging to an entity other than a requestor.

The agency acknowledges the validity of the comment and changes the language used in subsection (h)(2) to clarify that the comptroller intends to review only a requestor's documents for the requestor's payments or obligations, which would include an invoice received by a requestor under subsection (e)(7).

The Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge and Hillco Partners commented in regard to §2.104(f) that the time limit of one year for funds to be expended is problematic. Additionally, the comment requested that the provision be harmonized with the other sections of the proposed rules to increase the time and/or modify the trigger for the deadline, or otherwise be deleted. In addition, the City of Fort Worth requested in regard to §2.104(f), language that would help clarify situations in which the comptroller would grant extensions.

The agency responds that submission deadline for disbursement requests was proposed because inefficiencies exist for program participants when numerous outstanding trust fund accounts exist. The requestor and the comptroller both share a responsibility to complete the disbursement review process as the comptroller regularly seeks additional information from a requestor before

a payment amount is determined. The comptroller also has a responsibility under Article 5190.14, Section 5A(m) to return unspent funds to the endorsing entities and the state after all eligible event costs are paid, and therefore finds that efficient review processes are in the state and local governments' best interest. In response to concerns about the proposed timeline, the agency agrees to extend the one-year period to a period in subsection (f) of no later than two years after the end date of the event before an extension must be sought, and has added a list of the information the comptroller will request whenever an exemption is sought.

The Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge and Hillco Partners commented that §2.104(g) lacks a clear standard. Additionally, the comments ask what is "justification" intended to mean and what types of "justification" might be required of a requestor?

The agency responds that as the agency administering the Major Events Trust Fund and as the state's chief accountant, the comptroller has authority to request justification for any expense or obligation the comptroller is considering for disbursement from the Major Events Trust Fund. Furthermore, Article 5190.14, Section 5A(i) also provides that a local organizing committee, endorsing municipality, or endorsing county shall provide information required by the comptroller to enable the comptroller to fulfill the comptroller's duties, which includes the processing of disbursement requests. Additionally, the most common justification question the comptroller asks of a requestor is why a particular expense is necessary for hosting a particular event.

The Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge and Hillco Partners commented that §2.104(h)(4) and (i) are limited to costs "necessary to fulfill obligations under the event support contract." How are those requirements consistent with §2.106(c) and (e), which would appropriately allow implied costs and certain other costs beyond those expressly stated in the event support contract?

The agency responds that §2.104(h) and (i) correctly indicate that all costs payable from an event's trust fund must be supported by an event support contract and must be necessary in order to fulfill the obligations of the contract. For example: An event support contract may require that 100,000 people have access to attend an event; and a city or county ordinance may have certain specifications for traffic planning related to a gathering of 100,000 people. In this example, the cost of meeting the specifications for traffic planning is both supported by an event support contract and is necessary to fulfill the obligations of the contract.

The Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge and Hillco Partners commented in regard to §2.104(h)(5) that for major events, it can often be necessary to have multiple disbursement requests spread over several months. Additionally, the comment requested that the comptroller consider a greater, but reasonable, number such as 3-5 requests.

The agency responds that the submission restriction for disbursement requests was proposed because inefficiencies exist when multiple or unplanned submissions exist for a requestor. The rule provides the comptroller discretion to grant an exception if the comptroller determines it is necessary.

The Honorable Ed Emmett, Harris County Judge and Hillco Partners commented in regard to §2.104(i) that the proposed language goes beyond Article 5190.14, Section 5A(k), to require a post-event certification by every endorsing municipality and county whether or not they are contributing to the trust fund and whether or not the costs have any relevance to their jurisdiction. Additionally, this could create significant issues among local jurisdictions and with local organizing committees.

The agency acknowledges that the statute requires prior approval of each contributing endorsing entity and has adjusted the language in subsection (i). In addition, the agency responds that contributing and endorsing entities must keep in mind that the comptroller will allocate all authorized contributions it receives for an event fund to each endorsing entity of the event's fund unless the contribution is specifically pledged to or provided directly by a particular endorsing entity. Additionally, regarding multi-jurisdictional events, each contributing jurisdiction pays a part of each expense because the expenses are funded proportionately to the contributions received in the fund pursuant to Article 5190.14, Section 5A(l). The comptroller does not review event related expenses for compliance with municipal or county laws, rules and policies for the appropriation and use of funds belonging to those entities. Expenses incurred for multi-jurisdictional events should be planned for and determinations regarding reimbursements should be made subject to agreement among all of the parties.

The Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge and Hillco Partners commented in regard to §2.104(i) that as drafted, municipalities and counties may object to making the required certification in subsection (i) for any expenses allowable under §2.106(c) and (e).

The agency acknowledges the validity of the comment and to address the concern that a person may misunderstand the certification statement as relates to an implied health and safety necessity, the comptroller has added new subsection (i)(4).

The Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge and Hillco Partners commented in regard to §2.104(l) that the process for data collection and analysis of attendees who are not residents of Texas will, in many cases require, significant time by qualified professional services providers hence it is unreasonable to require certified attendance numbers along with a written explanation of any decrease in attendance figures within 14 days after an event. Additionally, the comment requested that the comptroller expressly have a 30-day period after the post-event attendance information is submitted to make a formal determination of the of the actual number of attendees at the event who are not Texas residents, and furnish the requestor the source for such determination (to the extent different from the certified figure provided by the requestor), along with the proposed amount of any reduction in funding.

The agency acknowledges the validity of the comments regarding the 14 day time period and has revised the language in subsection (l) to clarify when an explanation may be submitted. In regard to request that the comptroller expressly have a 30-day period after the post-event attendance information is submitted to make a formal determination of the actual number of attendees at the event who are not Texas residents, the agency responds that this additional language is not necessary, as the comptroller is not required to make such a determination, but rather the applicant is required to provide that information to the comptroller.

The Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge and Hillco Partners

requested in regard to §2.104(m) that there be a formal administrative process for requestors to appeal denials of disbursement requests by the comptroller and a formal administrative appeal process if the requestor disagrees with the comptroller's attendance determination or reduction.

The agency points out that this comment appears to reference §2.104(m) incorrectly, as that section does not discuss the denial of disbursement requests by the comptroller. However, the agency responds that this request would have to be addressed by the legislature through a statutory change.

The Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge and Hillco Partners commented in regard to §2.106(c) and (e) that this section should recognize all event support contracts, not only those with an endorsing municipality or endorsing county. Additionally, this section should be drafted parallel to §2.107(a) to clarify that these types of costs are generally allowable, whether expressly stated in or implied by an event support contract.

The agency acknowledges the validity of the comments and to address the concern that event support contracts signed by local organizing committees were unaccommodated, the comptroller has added language in subsections (c) and re-lettered (d) indicating that a city or county may be acting through a local organizing committee or service provider to provide for the health and safety of its citizens. The comptroller also added language in to address concerns that the permissions expressed in this subsection for health and safety costs were not clearly stated.

The Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge and Hillco Partners commented in regard to §2.106(d) that it states that the comptroller may request "proof of necessity" for any cost submitted. The regulations establish a process for disbursements, requirements for disbursement requests, and allowable and disallowable costs. They also permit the comptroller to request supporting documentation for the costs submitted for disbursement. This requirement goes beyond that, without a clear standard.

The agency responds that as the agency administering the Major Events Trust Fund and as the state's chief accountant, the comptroller has authority to request justification for any expense or obligation the comptroller is considering for disbursement from the Major Events Trust Fund. Furthermore, Article 5190.14, Section 5A(i) also provides that a local organizing committee, endorsing municipality, or endorsing county shall provide information required by the comptroller to enable the comptroller to fulfill the comptroller's duties, which includes the processing of disbursement requests. However, the comptroller concurs that subsection (d) is redundant and has struck it from the rule.

The City of Fort Worth requested that in regard to §2.107(a), purse payouts and awards related to the equestrian events be specifically allowed as reimbursable costs.

The agency responds that permitting prize payouts and awards as reimbursable costs is inconsistent with the purpose of the statute (reimbursing authorized expenditures by eligible entities) wherein the fund balance is available to pay actual expenditures. Permitting purse payouts and awards results in expenditures that are effectively scalable to match the maximum funds available, thereby encouraging higher expenses than necessary.

The Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge and Hillco Partners commented in regard to §2.107(a)(7) that the proposed rules do not expressly include facility operational costs in subsection (a)(7). What is the reason for this? Additionally, will facility operational costs still be generally allowable?

The agency responds that certain types of direct costs relating to facility operations during an event are allowable. The comptroller did not include the provision in subsection (a)(7) because other parts of the rules more accurately describe the types of facility operational costs that would be allowable or prohibited.

The City of Fort Worth requested more clarification on when, and if, city employee costs may be reimbursed under the proposed new rules.

The agency responds that §2.107(a)(8) was included to assist local governments with understanding the types of employee costs that are considered direct costs.

The Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge and Hillco Partners commented in regard to §2.107(a)(13)(B) that the proposed rules should specify that promotional items distributed prior to the end of an event are generally allowable. As drafted, only items distributed prior to the start of an event would qualify, but promotional items are often distributed during an event.

The agency responds that the purpose of subsection (a)(13) was to accommodate bona fide promotional items intended for advertising an upcoming event. Giving away items during an event does not seem to constitute advertising the event. However, the comptroller acknowledges that advertising the event through broadcast and published media may be necessary through the end date of a multi-day event and the comptroller has expanded the advertising permission in subsection (a)(12)(A) to include advertising costs through the end date of the event.

The Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge and Hillco Partners commented in regard to §2.107(b)(18) that Article 5190, Section 5A(k) requires the "prior approval of each contributing endorsing municipality or endorsing county" for a disbursement request. This provision goes significantly beyond the statutory requirement, to state "any expenses which an endorsing municipality or endorsing county finds are unnecessary for the planning or conduct of an event" shall be disallowed by the comptroller (whether or not the municipality or city is contributing to the trust fund and whether or not the expense is otherwise allowable and whether or not the expense has any relevance to their jurisdiction).

The agency responds that each jurisdiction pays a part of each expense because the expenses are funded proportionately to the contributions received in the fund per Article 5190.14, Section 5A(l), and therefore each expense has relevance to each jurisdiction.

The Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge and Hillco Partners commented in regard to §2.107(c) that the comptroller should approve expenses that meet objective statutory and regulatory criteria for qualified expenses. The rules should help provide more certainty as to what expenses are reimbursable. A provision which grants the comptroller the blanket right to "deny a disbursement for any event, cost, expense or obligation the comptroller deems unnecessary, fiscally irresponsible, or not supportive of program objectives" effectively gives the comptroller carte blanche to deny any expense.

The agency responds that as the agency administering the Major Events Trust Fund and as the state's chief accountant, the

comptroller has authority to request justification for any expense or obligation the comptroller is considering for disbursement from the Major Events Trust Fund. The comptroller included subsection (c) to cover situations where expenses not otherwise specifically identified in the rules are fiscally irresponsible, unnecessary or not supportive of program objectives. The comptroller believes that it is in the best interest of the program to be able to deny requests of this nature.

The Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge, Hillco Partners and the City of Fort Worth all commented regarding the effective date of the rules. All of these comments essentially request that all new revisions of the rules only be applied to requests to establish a trust fund that are submitted to the comptroller on or after the date upon which the rules become effective.

The agency acknowledges the validity of the comments and has deleted the phase-in provisions in §2.104(m) and §2.107(d). The comptroller agrees to implement the rules based on the date an application to participate in the trust fund is received to the extent that state law permits.

These adoptions are pursuant to Texas Revised Civil Statutes Annotated, Article 5190.14, Section 5A(v) which allows the comptroller to adopt rules to implement the provisions of VTCS, Article 5190.14, Section 5A.

The amendments and new sections implement VTCS, Article 5190.14, Section 5A, as amended by Senate Bill 1678, 83rd Legislature; Senate Bill 398, 83rd Legislature, 2013; and Senate Bill 309, 82nd Legislature, 2011.

§2.100. Definitions.

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

(1) Comptroller--The Comptroller of Public Accounts for the state of Texas.

(2) Cost--A requestor's expenses and obligations required to attract, secure, and conduct an event under the event support contract net of revenues remitted to or due to the requestor for the same specific expense or obligation.

(3) Direct cost--Any cost that is incurred only because of soliciting, planning for, or conducting the event.

(4) Endorsing county--A county that contains a site selected by a site selection organization for one or more events, or a county that:

(A) does not contain a site selected by a site selection organization for an event;

(B) is included in the market area for the event as designated by the comptroller; and

(C) is a party to an event support contract.

(5) Endorsing municipality--A municipality that contains a site selected by a site selection organization for one or more events, or a municipality that:

(A) does not contain a site selected by a site selection organization for an event;

(B) is included in the market area for the event as designated by the comptroller; and

(C) is a party to an event support contract.

(6) Event support contract--A joinder undertaking, joinder agreement (as defined in Texas Civil Statutes, Article 5190.14, §1) or a similar contract executed by a local organizing committee, an endorsing municipality or an endorsing county and a site selection organization. The term does not include a request for bid, request for proposal, bid response, or a selection letter from a site selection organization except as those documents may be incorporated by reference into the event support contract.

(7) Event--This term has the same meaning as assigned by Article 5190.14, Section 5A(a)(4).

(8) Highly competitive selection process--A process in which the requestor shall document that the site selection organization has historically considered sites for the event outside of Texas on a competitive basis and intends to do so in the future.

(9) Local organizing committee--A nonprofit corporation or its successor in interest that:

(A) has been authorized by an endorsing municipality, endorsing county, or more than one endorsing municipality or county acting collectively to pursue an application and bid with a site selection organization for selection as the site of an event; or

(B) with the authorization of an endorsing municipality, endorsing county, or more than one endorsing municipality or county acting collectively, has executed an agreement with a site selection organization regarding a bid to host an event.

(10) Local share--The contribution to the fund made by or on behalf of an endorsing municipality or endorsing county.

(11) Market area--The geographic area within which the comptroller determines there is a reasonable likelihood of measurable economic impact directly attributable to the preparation for and presentation of the event and related activities.

(12) Privately owned property--Any property other than supplies that is not publicly owned property.

(13) Proof of payment--An official banking statement or other official document that reflects the transmission, transfer, or payment of funds from the requestor related to an event, which may be redacted of information related to transactions and balances not pertaining to the event, and which must be redacted of all information that is confidential and exempt from public disclosure under the Texas Public Information Act (Government Code, Chapter 552).

(14) Requestor--An endorsing county, endorsing municipality or local organizing committee that is requesting participation in the trust fund program. The term includes one or more endorsing counties and/or one or more endorsing municipalities acting collectively or in conjunction with a local organizing committee.

(15) Significantly lower--Actual attendance at an event is considered significantly lower than estimated attendance when the difference is 25% or greater.

(16) Site selection organization--This term has the same meaning assigned by Article 5190.14, Section 5A(a)(5).

(17) Travel--Includes lodging, mileage, rental car expense, airfare, and meals that are incurred while a person travels.

(18) Trust fund--The Major Events Trust Fund.

(19) Trust fund estimate--The comptroller's determination of the incremental increase in tax receipts eligible to be deposited in the trust fund for an eligible event.

§2.101. Eligibility.

(a) An event is eligible for participation in the trust fund program only if:

(1) a site selection organization selects a site in Texas for the event to be held one time or, for an event scheduled to be held each year for a period of years under an event support contract, one time each year for the period of years, after considering, through a highly competitive process, one or more sites that are not located in this state, except as otherwise provided for in statute;

(2) a site selection organization selects a site in this state as:

(A) the sole site for the event; or

(B) the sole site for the event in a region composed of this state and one or more adjoining states;

(3) the event will not be held more than once a calendar year in Texas; and

(4) the comptroller determines that the incremental increase in tax receipts equals or exceeds $1 million for the event, provided that for an event scheduled to be held each year for a period of years under an event support contract, the incremental increase in tax receipts shall be calculated as if the event did not occur in the prior year.

(b) A requesting municipality and/or county cannot simultaneously apply for the Major Events Trust Fund program and the Events Trust Fund program for the same event. Nothing contained herein prohibits the submission of an application for the Events Trust Fund program for events that the comptroller has deemed ineligible for the Major Events Trust Fund program.

§2.103. Reporting.

(a) After the conclusion of an event, a requestor must provide certain information related to the event to the comptroller, including:

(1) within 45 days after the last day of the approved event, an attendance certification signed by the person who signed the original letter requesting participation in the trust fund program under §2.102(a)(1) of this title (relating to Request to Establish a Trust Fund), or his/her successor. The certification must include:

(A) the estimated number of attendees at the approved event that are not residents of Texas;

(B) total actual attendance at the event; and

(C) the source for such numbers;

(2) upon request of the comptroller, additional information including financial information, or other public information held by the requestor that the comptroller considers necessary to evaluate the success of the trust fund program; and

(3) upon request of the comptroller, any information the comptroller finds necessary to comply with the reporting requirements in Article 5190.14, Section 5A(w).

(b) Information provided under subsection (a) of this section, should only be provided if the requestor considers the information to be public.

§2.104. Disbursements for Event Costs.

(a) Disbursements from the trust fund shall be used to finance direct costs of the approved event related to:

(1) applying or bidding for selection as the site of an event in this state;

(2) the construction, improvement, or renovation of facilities to the extent authorized by law that are directly attributable to fulfilling obligations of the event support contract;

(3) paying the principal of and interest on notes issued by an endorsing municipality or endorsing county under Texas Civil Statutes, Article 5190.14, Section 5A(g); or

(4) preparing for and conducting an event in this state in accordance with the event support contract.

(b) Disbursements from the trust fund may not be used to make payments to a requestor or any other entity that are not directly attributable to allowable costs described in subsection (a) of this section. Disbursements are subject to verification or audit prior to or after payment by the comptroller to ensure compliance with this subsection.

(c) No later than the date of the event, the requestor shall submit to the comptroller:

(1) a complete and fully executed copy of the event support contract, any amendment to the contract, and any incorporated documentation;

(2) documentation affirming the participation of the local organizing committee, if one exists; and

(3) if an endorsing municipality or endorsing county requests to have the local tax funds withheld from amounts that would otherwise be allocated to an endorsing municipality or endorsing county, the request must be submitted to the comptroller no later than the date of the event, with a proposed local share withholding plan. The comptroller will make every effort to accommodate the proposed plan, but retains the authority to withhold at a different rate as necessary.

(d) No later than 90 days after the event, endorsing municipalities and endorsing counties without a proposed local funds withholding plan shall submit an amount up to or equal to the calculated local share.

(e) A disbursement request letter must contain:

(1) the Texas Taxpayer Identification Number or a comptroller form AP-152 Texas Application for Payee Identification Number for each endorsing municipality, endorsing county or local organizing committee (as designated by an endorsing municipality or endorsing county) receiving disbursements directly from the comptroller;

(2) the amount to be disbursed;

(3) a general explanation of the costs the disbursement request represents;

(4) copies or specifications for any publications, printed materials, signage, or advertising cost included in the disbursement request;

(5) a detailed list presented in the form prescribed by the comptroller of costs included in the request;

(6) copies of the requestor's invoices, receipts, contracts, proof of payment if payment has been made by the requestor, and other documents supporting the costs included in the disbursement request;

(7) if a requestor seeks disbursement for expenses incurred by another entity because of an obligation specified in the event support or event related service contract, copies of the invoice(s) sent by the entity to the requestor for the expenses, and proof of the requestor's payment if the payment has been made;

(8) for a request submitted by a local organizing committee, documentation showing the prior approval of the disbursement request by each contributing endorsing municipality and/or endorsing county;

(9) a statement indicating whether any information provided to the comptroller is confidential and exempt from public disclosure under the Texas Public Information Act (Government Code, Chapter 552), including the legal citation showing the exemption claimed;

(10) a copy of any financial report the requestor is required to submit to the site selection organization under the event support contract unless a specific exemption is granted by the comptroller; and

(11) the name and contact information of the requestor's officer or employee and any external designee or representative who may be contacted regarding the disbursement request.

(f) Funds in the trust fund must be fully expended within two years of the end date of the event unless an extension is granted by the comptroller. After this two year period and any extension period, the comptroller shall return the local share of any unexpended balances in the trust fund to the respective endorsing municipality and/or endorsing county in proportion to their initial contribution, regardless of the source of the local share. Prior to the end of this two year period plus any extension granted, the comptroller may return any local share remaining unexpended in the trust fund upon request by an endorsing municipality and/or endorsing county, upon determining ineligibility to receive funding under this subchapter, or after the payment of all eligible costs is completed.

(g) The comptroller may request supporting documentation or justification regarding any costs submitted for reimbursement.

(h) The comptroller will not consider a disbursement request that:

(1) is not signed by a requestor;

(2) requests reimbursement for payments or obligations belonging to any entity other than a requestor as a party to an event support contract;

(3) is submitted to the comptroller more than one year after the end date of the event unless the comptroller has granted an extension to the requestor;

(4) is not supported by an event support contract; or

(5) does not include all event costs being sought by the requestor for disbursement, unless the comptroller, at its sole discretion, determines that an exception is necessary.

(i) Each disbursement request must be accompanied by a certification completed by each contributing endorsing municipality or endorsing county.

(1) The certification required by this subsection must be in the following form: Regarding the events trust fund disbursement request in the amount of $_____, for the _____ {name of event} I, _____ {name of authorized official}, approve of each cost submitted for disbursement from the trust fund. I certify that each cost is necessary to fulfill obligations under the event support contract. I certify that the funds will not be used for the purpose of soliciting the relocation of a professional sports franchise located in this state; and that no costs sought for disbursement from the trust fund are also being reimbursed by another entity. I also certify that I have the authority to make this certification statement on behalf of the municipality or county and that I take responsibility for the disbursement being requested.

(2) The certification must be signed by an official of the endorsing municipality or endorsing county who is authorized to bind the municipality or county.

(3) An endorsing municipality or endorsing county may not delegate to another person or entity its obligation to approve a disbursement request or sign the certification required by this subsection.

(4) A person may certify a cost as being necessary to fulfill obligations under the event support contract even if the cost is an implied requirement as described under §2.106(c) of this title (relating to Event Support Contracts).

(j) A disbursement made from the trust fund by the comptroller in satisfaction of a requestor's obligation shall be satisfied proportionately from the state and local share in the trust fund in the proportion of 6.25:1 of state funds to local share notwithstanding any agreements to the contrary made by a requestor.

(k) The comptroller shall not make any disbursements for event costs until all reporting requirements under §2.103(a)(1) of this title (relating to Reporting) are satisfied. The comptroller, at its sole discretion, may also withhold payment for event costs pending the receipt of information under any other reporting requirements under this subsection.

(l) If the actual number of attendees at the approved event is significantly lower than the pre-event estimate, as determined by the comptroller, the amount of the fund available for disbursement shall be reduced according to the attached chart. Any reduction in the fund under this subsection shall be done in the same proportion as the statutory contribution rate between state funds and the local share (6.25:1). The percentage of fund reduction may be decreased based on a written explanation by the requestor to the comptroller, along with the actual attendance numbers. The requestor must submit their written explanation to the comptroller with the certification required by §2.103(a)(1) of this title, or within 14 days of a comptroller request after the certification under §2.103(a)(1) of this title is submitted.
Figure: 34 TAC §2.104(l)

§2.106. Event Support Contracts.

(a) In considering whether to make a disbursement from the trust fund, the comptroller may not consider a contingency clause in an event support contract as relieving a requestor's obligation to pay a cost under the contract.

(b) The event support contract must specify which types of goods, services, fixtures, equipment, facility or other property improvements or temporary maintenance are required to conduct the event in order for the comptroller to make a disbursement for a cost. The comptroller will not consider for payment event support contract terms which are overly broad or too general in nature, such terms include:

(1) blanket "catch-all" terms, such as "any necessary fixtures or improvements;"

(2) references in terms such as "etc." or "miscellaneous" or "as needed" or "other;" and

(3) terms that reference the comptroller's decision making authority or that reference the statute, such as "any expense allowed by the comptroller" or "any expense allowed by statute."

(c) Notwithstanding subsection (b), the comptroller may consider making a disbursement for a direct cost that is required by an event support contract in broad or general terms for the endorsing municipality or endorsing county, whether acting independently, jointly, through a local organizing committee, or other service provider, to provide for the health and safety of its citizens during the event and of the people or animals attending or participating in the event. The following are ex-

amples of generally allowable health and safety costs of an approved event that may be required by broad or general terms:

(1) water necessary to prevent dehydration;

(2) security;

(3) professional fire marshal or engineer requirements for event facilities and other event related property or equipment;

(4) portable restrooms, trash receptacles, and other types of sanitation necessities;

(5) shade;

(6) lighting;

(7) traffic planning and management;

(8) severe weather planning and mitigation;

(9) way-finding signage or staff;

(10) barriers;

(11) seating;

(12) permits and professional or consulting services for acquiring permits;

(13) professional stand-by services, such as stand-by medical services;

(14) "Americans with Disabilities Act" (ADA) accommodations and compliance;

(15) command center expenses;

(16) credentials; and

(17) overtime and equipment needed for police, fire, and other emergency operations staff to host a safe event.

(d) Regardless of whether a cost is covered under subsections (a), (b), or (c), the comptroller will consider making a disbursement only for direct costs resulting from a requestor:

(1) soliciting and being awarded the approved event;

(2) executing the event support contract;

(3) planning for or conducting the event in accordance with the event support contract; or

(4) estimating or determining the approved event's attendance and economic impact.

§2.107. Allowed and Disallowed Costs.

(a) The following costs are supportive of the trust fund program goals and are generally allowable:

(1) construction, renovations, improvements, fixtures, temporary maintenance, and financing costs for event sites that are:

(A) not limited or prohibited by subsection (b) of this section;

(B) permissible under §2.106 of this title (relating to Event Support Contracts); and

(C) within the designated market area;

(2) fees charged by a site selection organization which must be paid as a prerequisite to holding an event, including hosting fees, sanction fees, participation fees, or bid fees;

(3) performance bonds or insurance required for hosting the event;

(4) improvements or maintenance to publicly owned real property impacted by the conduct of the event, such as a public roadway, that is:

(A) not limited or prohibited by subsection (b) of this section;

(B) permissible under §2.106 of this title; and

(C) within the designated market area;

(5) security, safety, traffic, or public health related costs that are:

(A) not limited or prohibited by subsection (b) of this section;

(B) permissible under §2.106 of this title; and

(C) within the designated market area;

(6) water or food necessary to the health or safety of people or animals involved in hosting or participating in the event;

(7) event facility costs, including:

(A) cost to rent a facility if the requestor is required to provide the facility at no cost under the event support contract, or the cost equivalent to a rental credit if the requestor is required to provide the credit under the event support contract;

(B) the purchase or rental of furnishings and equipment:

(i) permissible under §2.106 of this title; and

(ii) not limited or prohibited by subsection (b) of this section;

(8) a requestor's staffing costs permissible under §2.106 of this title which include:

(A) hourly pay or overtime earned for hours specifically attributable to meeting objectives in §2.106 of this title for the approved event;

(B) compensation of staff hired or contracted specifically to meet objectives described in §2.106 of this title for the approved event; and

(C) occur prior to or during the event, unless the staff is assisting with the post-event economic impact study;

(9) a requestor's legal or professional service costs not prohibited under subsection (b)(5) of this section for:

(A) preparing a pre-event or post-event economic impact study;

(B) preparing event-related documents;

(C) fulfilling specific obligations of the event support contract; or

(D) consulting on soliciting, preparing for, or hosting the event;

(10) market-area transportation and/or parking services for the event that are net of revenues earned from providing the transportation and/or parking;

(11) temporary signs and banners, when required by the event support contract;

(12) advertising for the event which:

(A) occurs prior to or during the event;

(B) includes the event name and date, or event name and location; and

(C) are the requestor's obligations in the event support contract;

(13) promotional items that:

(A) are created specifically to advertise the event;

(B) are distributed prior to the event to members of the general public from locations likely to attract out-of-state visitors to the event; and

(C) meet the requirements of paragraph (12) of this subsection;

(14) costs attributable to inclement weather occurring immediately before, during, or immediately after an event, except costs of damages;

(15) any other direct costs resulting from requirements of the event support contract that are not prohibited in subsection (b) of this section; and

(16) other costs determined by the comptroller to meet program objectives.

(b) Disbursements for the following costs are prohibited, regardless of their inclusion in an event support contract:

(1) any tax listed in Texas Revised Civil Statutes, Article 5190.14, Section 5A;

(2) gifts of any kind, including tips, gratuities, or honoraria;

(3) grants to any person, entity, or organization;

(4) alcoholic beverages;

(5) costs related to representing any entity, including a requestor, in front of:

(A) the legislature for any reason; or

(B) the comptroller for the purpose of seeking reimbursement from the trust fund;

(6) expenses related to:

(A) gaming;

(B) raffles;

(C) prizes, cash, gift cards, pre-paid service certificates, or any other award or competitive performance compensation that is not a trophy, ribbon, medal, or sash required to be provided by the event support contract; or

(D) giveaways that do not meet the requirements of subsection (a)(13) of this section;

(7) expenses for religious items or religious publications of any kind, regardless of the religion or type of event;

(8) personal items and services;

(9) entertainment, hospitality, appearance fees, or "VIP" expenses;

(10) food not specifically authorized in subsection (a)(6) of this section;

(11) an individual's travel expenses not specifically authorized in subsection (a)(10) of this section, or that are not a component of a service contract under subsection (a)(9) of this section;

(12) reimbursement of any particular expense or obligation that was recouped or that will be recouped from another entity or from revenue earned under the event support contract that is identified to cover the cost;

(13) reimbursement of any cost not incurred, such as for lost profit or for an exchange-in-kind or product;

(14) damages of any kind;

(15) any amount in excess of 5.0% of the cost of any improvement made or fixture added to a site that is privately owned property where the improvement or fixture is expected to derive most of its value in subsequent uses of the site for future events;

(16) privately owned property not authorized under paragraph (15) of this subsection;

(17) costs that are not direct costs; or

(18) any expenses which a contributing endorsing municipality or endorsing county finds are unnecessary for the planning or conduct of an event.

(c) The comptroller may deny a disbursement for any event, cost, expense, or obligation the comptroller deems unnecessary, fiscally irresponsible, or not supportive of program objectives.

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, 2014.

TRD-201404238
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: September 25, 2014
Proposal publication date: March 7, 2014
For further information, please call: (512) 475-0387

34 TAC §2.105

The Comptroller of Public Accounts adopts the repeal of §2.105, concerning events generating over $15 million in state and local tax revenue, without changes to the proposed text as published in the March 7, 2014, issue of the *Texas Register* (39 TexReg 1658). The section is being repealed pursuant to Senate Bill 1678, Section 4, 83rd Legislature, 2013, which repealed VACS, Article 5190.14, Section 5A, Subsections (r), (s), (t), and (u), which specifically dealt with advanced funding of events which generate over $15 million in state and local tax revenue.

No comments were received regarding adoption of the repeal.

This repeal is adopted pursuant to VTCS, Article 5190.14, Section 5A(v), which allows the comptroller to adopt rules to implement the provisions of VTCS, Article 5190.14, Section 5A.

The repeal implements Senate Bill 1678, Section 4, 83rd Legislature, 2013.

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, 2014.

TRD-201404240
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: September 25, 2014
Proposal publication date: March 7, 2014
For further information, please call: (512) 475-0387

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SUBCHAPTER B. EVENTS TRUST FUND

34 TAC §§2.200 - 2.206

The Comptroller of Public Accounts adopts amendments to §2.202, concerning request to establish a trust fund, without changes to the proposed text as published in the March 7, 2014, issue of the *Texas Register* (39 TexReg 1658) and it will not be republished. The comptroller adopts amendments to §2.200, concerning definitions, §2.201, concerning eligibility, §2.203, concerning reporting, §2.204, concerning disbursements for event costs, §2.205, concerning allowed and disallowed costs, and new §2.206, concerning event support contracts, with changes to the proposed text as published in the March 7, 2014, issue of the *Texas Register* (39 TexReg 1658) and they will be republished. The amendments are deemed necessary to implement provisions of VTCS, Article 5190.14, Section 5C, as amended by Senate Bill 1678, 83rd Legislature, 2013.

Amendments to §2.201(a) provide that an event scheduled to be held one time each year or for a period of years under an event support contract may be eligible for participation in the Events Trust Fund program if other criteria are met. This same amendment more closely conforms the eligibility criteria in the rule to the statute. The proposed amendments create subsection (c) to provide that during any 12-month period, endorsing municipalities and/or endorsing counties are limited to ten trust fund requests for an event with an incremental tax increase of less than $200,000, no more than three of such events may be non-sporting events.

A grammatical error in §2.201(a)(1) in which the phrase "events support contract" was erroneously used instead of the phrase "event support contract" has been corrected.

Amendments to §2.202(a) add a requirement that the economic impact study for a particular event must include an estimate of the number of attendees to this event who are not residents of Texas. Certain information required to be included in the economic impact study under subsection (b) is now moved to subsection (a).

The agency received comments on the proposed amendments from The City of Fort Worth, The Honorable Annise D. Parker, Mayor, City of Houston, The Honorable Ed Emmett, Harris County Judge, Hillco Partners, and the City of El Paso. Their comments and the agency's responses are as follows.

Hillco Partners commented that the proposed definition of "proof of payment" in paragraph (14), should be broadened to include other forms of proof of payment (such as copies of cancelled checks, wire transfer of funds, receipts, etc.) that are generally accepted by state agencies.

The agency acknowledges the validity of the comment and clarifies the definition of "proof of payment" in paragraph (14) to include any official document showing the transfer of funds from the requestor to the payee.

The Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge and Hillco Partners commented that the proposed definition of "publicly owned property" in paragraph (15) should be should be deleted and the ordinary meaning of "publicly owned" under Texas law should apply.

The agency acknowledges the validity of the comment and agrees that there is a common understanding of publicly owned property and has stricken the definition for that reason.

The City of Fort Worth commented that in regard to the proposed definition of "significantly lower" in paragraph (17), the city requests that the comptroller re-evaluate this definition and increase the percentage to 25% or greater.

The agency acknowledges the validity of the comment and changes the definition of "significantly lower" in paragraph (17) (which is now renumbered paragraph (16)) to accommodate the request to increase the percentage to 25% or greater.

The City of Fort Worth, the City of El Paso and Hillco Partners commented regarding the amendment to §2.203(a). The comments requested that the proposed 14 day deadline in subsection (a) for the submission of an attendance certification be extended.

The agency acknowledges the validity of the comments and changes the language in the amendment to subsection (a) to allow for additional time. In relation to additional time being added to subsection (a), additional language was added to §2.204(k) based on administrative necessity.

The City of Fort Worth commented that while they support the proposed amendment to §2.204(e)(7), they believe that the language may conflict with subsection (h)(2) concerning cost invoices belonging to an entity other than a requestor.

The agency acknowledges the validity of the comment and changes the language used in subsection (h)(2) to clarify that the comptroller intends to review only a requestor's documents for the requestor's payments or obligations, which would include an invoice received by a requestor under subsection (e)(7).

The Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge and Hillco Partners commented in regard to §2.204(h)(5) that for major events, it can often be necessary to have multiple disbursement requests spread over several months. Additionally, the comment requested that the comptroller consider a greater, but reasonable, number such as 3-5 requests.

The agency responds that the submission restriction for disbursement requests was proposed because inefficiencies exist when multiple or unplanned submissions exist for a requestor. The rule provides the comptroller discretion to grant an exception if the comptroller determines it is necessary.

The Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge and Hillco Partners commented in regard to §2.204(i) that the proposed language goes beyond Article 5190.14, Section 5C(k), to require a post-event certification by every endorsing municipality and county whether or not they are contributing to the trust fund and whether or not the costs have any relevance to their jurisdiction.

Additionally, this could create significant issues among local jurisdictions and with local organizing committees.

The agency acknowledges that the statute requires prior approval of each contributing endorsing entity and has adjusted the language in subsection (i). In addition, the agency responds that contributing and endorsing entities must keep in mind that the comptroller will allocate all authorized contributions it receives for an event fund to each endorsing entity of the event's fund unless the contribution is specifically pledged to or provided directly by a particular endorsing entity. Additionally, regarding multi-jurisdictional events, each contributing jurisdiction pays a part of each expense because the expenses are funded proportionately to the contributions received in the fund pursuant to Article 5190.14, Section 5C(l). The comptroller does not review event related expenses for compliance with municipal or county laws, rules and policies for the appropriation and use of funds belonging to those entities. Expenses incurred for multi-jurisdictional events should be planned for and determinations regarding reimbursements should be made subject to agreement among all of the parties.

The Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge and Hillco Partners commented in regard to §2.204(l) that the process for data collection and analysis of attendees who are not residents of Texas will, in many cases require, significant time by qualified professional services providers hence it is unreasonable to require certified attendance numbers along with a written explanation of any decrease in attendance figures within 14 days after an event. Additionally, the comment requested that the comptroller expressly have a 30-day period after the post-event attendance information is submitted to make a formal determination of the of the actual number of attendees at the event who are not Texas residents, and furnish the requestor the source for such determination (to the extent different from the certified figure provided by the requestor), along with the proposed amount of any reduction in funding.

The agency acknowledges the validity of the comments regarding the 14 day time period and has revised the language in subsection (l) to clarify when an explanation may be submitted. In regard to request that the comptroller expressly have a 30-day period after the post-event attendance information is submitted to make a formal determination of the actual number of attendees at the event who are not Texas residents, the agency responds that this additional language is not necessary, as the comptroller is not required to make such a determination, but rather the applicant is required to provide that information to the comptroller.

The City of Fort Worth requested that in regard to §2.205(a), purse payouts and awards related to the equestrian events be specifically allowed as reimbursable costs.

The agency responds that permitting prize payouts and awards as reimbursable costs is inconsistent with the purpose of the statute (reimbursing authorized expenditures by eligible entities) wherein the fund balance is available to pay actual expenditures. Permitting purse payouts and awards results in expenditures that are effectively scalable to match the maximum funds available, thereby encouraging higher expenses than necessary.

The Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge and Hillco Partners commented in regard to §2.205(a)(7) that the proposed rules would delete facility operational costs from subsection (a)(7)(C). What is the reason for this? Additionally, will facility operational costs still be generally allowable?

The agency responds that certain types of direct costs relating to facility operations during an event are allowable. The comptroller proposed the removal of the existing subsection (a)(7)(C) because other parts of the rules more accurately describe the types of facility operational costs that would be allowable or prohibited.

The City of Fort Worth requested more clarification on when, and if, city employee costs may be reimbursed under the proposed new rules.

The agency responds that subsection (a)(8) was included to assist local governments with understanding the types of employee costs that are considered direct costs.

The Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge and Hillco Partners commented in regard to subsection (a)(13)(B) that the proposed rules should specify that promotional items distributed prior to the end of an event are generally allowable. As drafted, only items distributed prior to the start of an event would qualify, but promotional items are often distributed during an event.

The agency responds that the purpose of proposed subsection (a)(13) was to accommodate bona fide promotional items intended for advertising an upcoming event. Giving away items during an event does not seem to constitute advertising the event. However, the comptroller acknowledges that advertising the event through broadcast and published media may be necessary through the end date of a multi-day event and the comptroller has expanded the advertising permission in subsection (a)(12)(A) to include advertising costs through the end date of the event.

The Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge, Hillco Partners and the City of Fort Worth all commented regarding the effective date of the rules. All of these comments essentially request that all new revisions of the rules only be applied to requests to establish a trust fund that are submitted to the comptroller on or after the date upon which the rules become effective.

The agency acknowledges the validity of the comments and has deleted the phase-in provisions in §2.204(k) and §2.205(d). The comptroller agrees to implement the rules based on the date an application to participate in the trust fund is received to the extent that state law permits.

The Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge and Hillco Partners commented that §2.206 should recognize all event support contracts, not only those with an endorsing municipality or endorsing county. Additionally, this section should be drafted to parallel §2.205(a) to clarify that these types of costs are generally allowable, whether expressly stated in or implied by an event support contract.

The agency acknowledges the validity of the comment and to address the concern that event support contracts signed by local organizing committees were unaccommodated, the comptroller has added language in subsection (c) indicating that a city or county may be acting through a local organizing committee or service provider to provide for the health and safety of its citizens. The comptroller also added language to address concerns that the permissions expressed in this subsection for health and safety costs were not clearly stated.

The Honorable Annise D. Parker, Mayor, City of Houston, the Honorable Ed Emmett, Harris County Judge and Hillco Partners commented in regard to subsection (d) that it states that the comptroller may request "proof of necessity" for any cost submitted. The regulations establish a process for disbursements, requirements for disbursement requests, and allowable and disallowable costs. They also permit the comptroller to request supporting documentation for the costs submitted for disbursement. This requirement goes beyond that, without a clear standard.

The agency responds that as the agency administering the Events Trust Fund and as the state's chief accountant, the comptroller has authority to request justification for any expense or obligation the comptroller is considering for disbursement from the Events Trust Fund. Furthermore, Article 5190.14, Section 5A(i) also provides that a local organizing committee, endorsing municipality, or endorsing county shall provide information required by the comptroller to enable the comptroller to fulfill the comptroller's duties, which includes the processing of disbursement requests. However, the comptroller concurs that subsection (d) is redundant and has struck it from the rule.

The adoptions are pursuant to Texas Revised Civil Statutes Annotated Article 5190.14, Section 5C(p), which allows the comptroller to adopt rules to implement the provisions of VTCS, Article 5190.14, Section 5C.

The amendments and new section implement VTCS, Article 5190.14, Section 5C, as amended by Senate Bill 1678, 83rd Legislature, 2013.

§2.200. Definitions.

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

(1) Comptroller--The Comptroller of Public Accounts for the state of Texas.

(2) Cost--A requestor's expenses and obligations required to attract, secure, and conduct an event under the event support contract net of revenues remitted to or due to the requestor for the same specific expense or obligation.

(3) Direct cost--Any cost that is incurred only because of soliciting, planning for, or conducting the event.

(4) Endorsing county--A county that contains within its boundaries at the time of application to the site selection organization a site selected by a site selection organization for one or more events.

(5) Endorsing municipality--A municipality that contains within its boundaries at the time of application to the site selection organization a site selected by a site selection organization for one or more events.

(6) Event support contract--A joinder undertaking, joinder agreement (as defined in Texas Civil Statutes, Article 5190.14, §1) or a similar contract executed by a local organizing committee, an endorsing municipality or an endorsing county and a site selection organization. The term does not include a request for bid, request for proposal, bid response or a selection letter from a site selection organization except as those documents may be incorporated by reference into the event support contract.

(7) Event--An event or a related series of events held in this state for which a local organizing committee, endorsing county, or endorsing municipality seeks approval from a site selection organization to hold the event at a site in this state. The term includes any activities related to or associated with the event.

(8) Highly competitive selection process--A process in which the requestor shall document that the site selection organization has historically considered sites for the event outside of Texas on a competitive basis and intends to do so in the future.

(9) Local organizing committee--A nonprofit corporation or its successor that:

(A) has been authorized by an endorsing municipality, endorsing county, or more than one endorsing municipality or county acting collectively to pursue an application and bid with a site selection organization for selection as the site of an event; or

(B) with the authorization of an endorsing municipality, endorsing county, or more than one endorsing municipality or county acting collectively, has executed an agreement with a site selection organization regarding a bid to host an event.

(10) Local share--The contribution to the fund made by or on behalf of an endorsing municipality or endorsing county.

(11) Market area--The geographic area within which the comptroller determines there is a reasonable likelihood of measurable economic impact directly attributable to the preparation for and presentation of the event and related activities.

(12) Nonsporting event--An event other than a sporting event.

(13) Privately owned property--Any property other than supplies that is not publicly owned property.

(14) Proof of payment--An official banking statement or other official document that reflects the transmission, transfer, or payment of funds from the requestor related to an event, which may be redacted of information related to transactions and balances not pertaining to the event, and which must be redacted of all information that is confidential and exempt from public disclosure under the Texas Public Information Act (Government Code, Chapter 552).

(15) Requestor--An endorsing county, endorsing municipality or local organizing committee that is requesting to participate in the trust fund program. The term includes one or more endorsing counties and/or one or more endorsing municipalities acting collectively or in conjunction with a local organizing committee.

(16) Significantly lower--Actual attendance at an event is considered significantly lower than estimated attendance when the difference is 25% or greater.

(17) Site selection organization--An entity that conducts or considers conducting an eligible event in this state.

(18) Sporting event--An event whose primary purpose, as determined by the comptroller, is the conduct of recreational or competitive athletic or physical activities, including individual, team, equestrian, or automotive competitions.

(19) Travel--Includes lodging, mileage, rental car expense, airfare, and meals that are incurred while a person travels.

(20) Trust fund--The Events Trust Fund.

(21) Trust fund estimate--The comptroller's determination of the incremental increase in tax receipts eligible to be deposited in the trust fund for an eligible event.

§2.201. Eligibility.

(a) An event is eligible for participation in the trust fund program only if:

(1) a site selection organization selects a site in Texas for the event to be held one time or, for an event scheduled to be held each

year for a period of years under an event support contract, one time each year for the period of years, after considering, through a highly competitive selection process, one or more sites that are not located in this state;

(2) a site selection organization selects a site in this state as:

(A) the sole site for the event; or

(B) the sole site for the event in a region composed of this state and one or more adjoining states; and

(3) the event will not be held more than once a calendar year in Texas or an adjoining state.

(b) No joinder agreement, joinder undertaking, event support contract, interlocal agreement, or any other type of agreement may require, obligate or compel the comptroller to perform any act not required by law. The comptroller is not responsible or obligated to enforce or compel the performance of any party subject to the terms of any joinder agreement, joinder undertaking, event support contract, interlocal agreement, or any other agreement to which an endorsing municipality, endorsing county or local organizing committee is a party.

(c) During any 12-month period, endorsing municipalities and/or endorsing counties are limited to 10 trust fund requests for an event with an incremental tax increase of less than $200,000, as determined by the comptroller. For events with an incremental tax increase of less than $200,000, as determined by the comptroller, no more than three events may be nonsporting events.

§2.203. Reporting.

(a) Within 45 days after the last day of the approved event, a requestor must provide an attendance certification signed by the person who signed the original letter requesting participation in the trust fund program under §2.202(a)(1) of this title (relating to Request to Establish a Trust Fund), or his/her successor. The certification must include:

(1) the estimated number of attendees at the approved event that are not residents of Texas;

(2) total actual attendance at the event; and

(3) the source for such numbers.

(b) Upon request, the requestor must provide additional information related to the event, including hotel information, financial information, or other public information held by the requestor that the comptroller considers necessary to evaluate the success of the trust fund program, including information to assist the comptroller in conducting the study required in Senate Bill 1678, Section 5, 83rd Legislature, 2013.

(c) The comptroller may promulgate forms to collect information required under this section.

§2.204. Disbursements for Event Costs.

(a) Disbursements from the trust fund shall be used to finance direct costs of the approved event related to:

(1) applying or bidding for selection as the site of an event in this state;

(2) the construction, improvement, or renovation of facilities to the extent authorized by law that are directly attributable to fulfilling obligations of the event support contract;

(3) paying the principal of and interest on notes issued by an endorsing municipality or endorsing county under Texas Civil Statutes, Article 5190.14, Section 5C(g); or

(4) preparing for and conducting an event in this state in accordance with the event support contract.

(b) Disbursements from the trust fund may not be used to make payments to a requestor or any other entity that are not directly attributable to allowable costs described in subsection (a) of this section. Disbursements are subject to verification or audit prior to or after payment by the comptroller to ensure compliance with this subsection.

(c) No later than the date of the event, the requestor shall submit to the comptroller:

(1) a complete and fully executed copy of the event support contract, any amendment to the contract, and any incorporated documentation;

(2) documentation affirming the participation of the local organizing committee, if one exists; and

(3) if an endorsing municipality or endorsing county requests to have the local tax funds withheld from amounts that would otherwise be allocated to an endorsing municipality or endorsing county, the request must be submitted to the comptroller no later than the date of the event with a proposed local share withholding plan. The comptroller will make every effort to accommodate the proposed plan, but retains the authority to withhold at a different rate as necessary.

(d) No later than 90 days after the event, endorsing municipalities and endorsing counties without a proposed local funds withholding plan shall submit an amount up to or equal to the calculated local share.

(e) A disbursement request letter must contain:

(1) the Texas Taxpayer Identification Number or a comptroller Form AP-152 Texas Application for Payee Identification Number for each endorsing municipality, endorsing county or local organizing committee (as designated by an endorsing municipality or endorsing county) receiving disbursements directly from the comptroller;

(2) the amount to be disbursed;

(3) a general explanation of the costs the disbursement request represents;

(4) copies or specifications for any publications, printed materials, signage, or advertising cost included in the disbursement request;

(5) a detailed list presented in the form prescribed by the comptroller of costs included in the request;

(6) copies of the requestor's invoices, receipts, contracts, proof of payment if payment has been made by the requestor, and other documents supporting the costs included in the disbursement request;

(7) if a requestor seeks disbursement for expenses incurred by another entity because of an obligation specified in the event support or event related service contract, copies of the invoice(s) sent by the entity to the requestor for the expenses and proof of the requestor's payment if the payment has been made;

(8) for a request submitted by a local organizing committee, documentation showing the prior approval of the disbursement request by each contributing endorsing municipality and/or endorsing county;

(9) a statement indicating whether any information provided to the comptroller is confidential and exempt from public disclosure under the Texas Public Information Act (Government Code, Chapter 552), including the legal citation showing the exemption claimed;

(10) a copy of any financial report the requestor is required to submit to the site selection organization under the event support contract unless a specific exemption is granted by the comptroller; and

(11) the name and contact information of the requestor's officer or employee and any external designee or representative who may be contacted regarding the disbursement request.

(f) Funds in the trust fund must be fully expended within one year of the date the first disbursement request is received by the comptroller unless an extension is granted by the comptroller. After this one year period and any extension period, the comptroller shall return the local share of any unexpended balances in the trust fund to the respective endorsing municipality and/or endorsing county in proportion to their initial contribution, regardless of the source of the local share. Prior to the end of this one year period plus any extension granted, the comptroller may return any local share remaining unexpended in the trust fund upon request by an endorsing municipality and/or endorsing county or after the payment of all costs is completed.

(g) The comptroller may request supporting documentation or justification regarding any costs submitted for reimbursement.

(h) The comptroller will not consider a disbursement request that:

(1) is not signed by a requestor;

(2) requests reimbursement for payments or obligations belonging to any entity other than a requestor as a party to an event support contract;

(3) is submitted to the comptroller more than 180 days after the end date of the event unless the comptroller has granted an extension to the requestor;

(4) is not supported by an event support contract; or

(5) does not include all event costs being sought by the requestor for disbursement, unless the comptroller, at its sole discretion, determines that an exception is necessary.

(i) Each disbursement request must be accompanied by a certification completed by each contributing endorsing municipality or endorsing county.

(1) The certification required by this subsection must be in the following form: Regarding the events trust fund disbursement request in the amount of $_____, for the _____{name of event} I, _____{name of authorized official}, approve of each cost submitted for disbursement from the trust fund. I certify that each cost is necessary to fulfill obligations under the event support contract. I certify that the funds will not be used for the purpose of soliciting the relocation of a professional sports franchise located in this state; and that no costs sought for disbursement from the trust fund are also being reimbursed by another entity. I also certify that I have the authority to make this certification statement on behalf of the municipality or county and that I take responsibility for the disbursement being requested.

(2) The certification must be signed by an official of the endorsing municipality or endorsing county who is authorized to bind the municipality or county.

(3) An endorsing municipality or endorsing county may not delegate to another person or entity its obligation to approve a disbursement request or sign the certification required by this subsection.

(4) A person may certify a cost as being necessary to fulfill obligations under the event support contract even if the cost is an implied requirement as described under §2.206(c) of this title (relating to Event Support Contracts).

(j) A disbursement made from the trust fund by the comptroller in satisfaction of a requestor's obligation shall be satisfied proportionately from the state and local share in the trust fund in the proportion of 6.25:1 of state funds to local share notwithstanding any agreements to the contrary made by a requestor.

(k) No disbursements for event costs shall be made from the trust fund until reporting requirements under §2.203(a)(1) of this title (relating to Reporting) are complied with. The comptroller, at its sole discretion, may also withhold payment for event costs pending the receipt of information under any other reporting requirements under this subsection.

(l) If the actual number of attendees at the approved event is significantly lower than the pre-event estimate, as determined by the comptroller, the amount of the fund available for disbursement shall be reduced according to the attached chart. Any reduction in the fund under this subsection shall be done in the same proportion as the statutory contribution rate between state funds and the local share (6.25:1). The percentage of fund reduction may be decreased based on a written explanation by the requestor to the comptroller, along with the actual attendance numbers. The requestor must submit their written explanation to the comptroller with the certification required by §2.203(a) of this title (relating to Reporting), or within 14 days of a comptroller request after the certification under §2.203(a) of this title is submitted.
Figure: 34 TAC §2.204(l)

§2.205. Allowed and Disallowed Costs.

(a) The following costs are supportive of the trust fund program goals and are generally allowable:

(1) construction, renovations, improvements, fixtures, temporary maintenance, and financing costs for public event sites that are:

(A) not limited or prohibited by subsection (b) of this section;

(B) permissible under §2.206 of this title (relating to Event Support Contracts); and

(C) within the designated market area;

(2) fees charged by a site selection organization which must be paid as a prerequisite to holding an event, including hosting fees, sanction fees, participation fees, or bid fees;

(3) performance bonds or insurance required for hosting the event;

(4) improvements or temporary maintenance to publicly owned real property impacted by the conduct of the event, such as a public roadway that is:

(A) not limited or prohibited by subsection (b) of this section;

(B) permissible under §2.206 of this title; and

(C) within the designated market area;

(5) security, safety, traffic, or public health related costs that are:

(A) not limited or prohibited by subsection (b) of this section;

(B) permissible under §2.206; of this title; and

(C) within the designated market area;

(6) water or food necessary to the health or safety of people or animals involved in hosting or participating in the event;

(7) event facility costs, including:

(A) cost to rent a facility if the requestor is required to provide the facility at no cost under the event support contract, or the cost equivalent to a rental credit if the requestor is required to provide the credit under the event support contract;

(B) the purchase or rental of furnishings and equipment:

(i) permissible under §2.206 of this title; and

(ii) not limited or prohibited by subsection (b) of this section;

(8) a requestor's staffing costs permissible under §2.206 of this title, which include:

(A) hourly pay or overtime earned for hours specifically attributable to meeting objectives in §2.206 of this title for the approved event;

(B) compensation of staff hired or contracted specifically to meet objectives described in §2.206 of this title for the approved event; and

(C) occur prior to or during the event, unless the staff is assisting with the post-event economic impact study;

(9) a requestor's legal or professional service costs not prohibited under subsection (b)(5) of this section for:

(A) preparing a pre-event or post-event economic impact study;

(B) preparing event-related documents;

(C) fulfilling specific obligations of the event support contract; or

(D) consulting on soliciting, preparing for, or hosting the event;

(10) market-area transportation and/or parking services for the event that are net of revenues earned from providing the transportation and/or parking;

(11) temporary signs and banners, when required by the event support contract;

(12) advertising for the event which:

(A) occurs prior to or during the event;

(B) includes the event name and date, or event name and location; and

(C) are the requestor's obligations in the event support contract;

(13) promotional items that:

(A) are created specifically to advertise the event;

(B) are distributed prior to the event to members of the general public from locations likely to attract out-of-state visitors to the event; and

(C) meet the requirements of paragraph (12) of this subsection;

(14) costs attributable to inclement weather occurring immediately before, during, or immediately after an event, except costs of damages;

(15) any other direct costs resulting from requirements of the event support contract that are not prohibited in subsection (b) of this section; and

(16) other costs determined by the comptroller to meet program objectives.

(b) Disbursements for the following costs are prohibited, regardless of their inclusion in an event support contract:

(1) any tax listed in Texas Revised Civil Statutes, Article 5190.14, Section 5C;

(2) gifts of any kind, including tips, gratuities, or honoraria;

(3) grants to any person, entity or organization;

(4) alcoholic beverages;

(5) costs related to representing any entity, including a requestor, in front of:

(A) the legislature for any reason; or

(B) the comptroller for the purpose of seeking reimbursement from the trust fund;

(6) expenses related to:

(A) gaming;

(B) raffles;

(C) prizes, cash, gift cards, pre-paid service certificates, or any other award or competitive performance compensation that is not a trophy, ribbon, medal, or sash required to be provided by the event support contract; or

(D) giveaways that do not meet the requirements of subsection (a)(13) of this section;

(7) expenses for religious items or religious publications of any kind, regardless of the religion or type of event;

(8) personal items and services;

(9) entertainment, hospitality, appearance fees, or "VIP" expenses;

(10) food not specifically authorized in subsection (a)(6) of this section;

(11) an individual's travel expenses not specifically authorized in subsection (a)(10) of this section, or that are not a component of a service contract under subsection (a)(9) of this section;

(12) reimbursement of any particular expense or obligation that was recouped or that will be recouped from another entity or from revenue earned under the event support contract that is identified to cover the cost;

(13) reimbursement of any cost not incurred, such as for lost profit or for an exchange-in-kind or product;

(14) damages of any kind;

(15) any cost or expense of or related to constructing an arena, stadium, or convention center;

(16) any cost or expense related to conducting usual and customary maintenance of a facility;

(17) any amount in excess of five percent of the cost of any improvement made or fixture added to a site that is privately owned property where the improvement or fixture is expected to derive most of its value in subsequent uses of the site for future events;

(18) privately owned property not authorized under paragraph (17) of this subsection;

(19) costs that are not direct costs; or

(20) any expenses which an endorsing municipality or endorsing county finds are unnecessary for the planning or conduct of an event.

(c) The comptroller may deny a disbursement for any event, cost, expense or obligation the comptroller deems unnecessary, fiscally irresponsible, or not supportive of program objectives.

§2.206. Event Support Contracts.

(a) In considering whether to make a disbursement from the trust fund, the comptroller may not consider a contingency clause in an event support contract as relieving a requestor's obligation to pay a cost under the contract.

(b) The event support contract must specify which types of goods, services, fixtures, equipment, facility, or other property improvements or temporary maintenance are required to conduct the event in order for the comptroller to make a disbursement for a cost. The comptroller will not consider event support contract terms which are overly broad or too general in nature, such terms include:

(1) blanket "catch-all" terms, such as "any necessary fixtures or improvements";

(2) references in terms such as "Etc." or "miscellaneous" or "as needed" or "other"; or

(3) terms that reference the comptroller's decision making authority or that reference the statute, such as "any expense allowed by the comptroller" or "any expense allowed by statute".

(c) Notwithstanding subsection (b), the comptroller may consider making a disbursement for a direct cost that is required by an event support contract in broad or general terms for the endorsing municipality or endorsing county, whether acting independently, jointly, through a local organizing committee or other service provider, to provide for the health and safety of its citizens during the event and of the people or animals attending or participating in the event. The following are examples of generally allowable health and safety costs of an approved event that may be required by broad or general terms:

(1) water necessary to prevent dehydration;

(2) security;

(3) professional fire marshal or engineer requirements for event facilities and other event related property or equipment;

(4) portable restrooms, trash receptacles, and other types of sanitation necessities;

(5) shade;

(6) lighting;

(7) traffic planning and management;

(8) severe weather planning and mitigation;

(9) way-finding signage or staff;

(10) barriers;

(11) seating;

(12) permits and professional or consulting services for acquiring permits;

(13) professional stand-by services, such as stand-by medical services;

(14) "Americans with Disabilities Act" (ADA) accommodations and compliance;

(15) command center expenses;

(16) credentials; and

(17) overtime and equipment needed for police, fire, and other emergency operations staff to host a safe event.

(d) Regardless of whether a cost is covered under subsection (a), (b) or (c) of this section, the comptroller will consider making a disbursement only for direct costs resulting from a requestor:

(1) soliciting and being awarded the approved event;

(2) executing the event support contract;

(3) planning for or conducting the event in accordance with the event support contract; or

(4) estimating or determining the approved event's attendance and economic impact.

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, 2014.

TRD-201404239
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: September 25, 2014
Proposal publication date: March 7, 2014
For further information, please call: (512) 475-0387

CHAPTER 20. TEXAS PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

34 TAC §§20.11, 20.13, 20.14, 20.16

The Comptroller of Public Accounts adopts amendments to §20.11, concerning definitions; §20.13, concerning statewide annual HUB utilization goals; and §20.16, concerning state agency reporting requirements, without changes to the proposed text published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5113) and they will not be republished. The comptroller adopts amendments to §20.14, concerning subcontracts, with changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5113) and will be republished. These sections are being amended to implement provisions of House Bill 194, effective September 1, 2013, passed by the 83rd Legislature, 2013. House Bill 194 adds to the definition of economically disadvantaged person under Government Code, §2161.001(3) certain veterans with certain service-connected disabilities and adds a requirement that the comptroller adopt rules to provide goals for increasing contract awards for the purchase of goods or services to businesses that qualify as historically underutilized businesses because they are owned or owned, operated, and controlled in whole or in part by one or more of such veterans. These sections are also being amended to conform the rule to Government Code, §2161.002 regarding updates to *The State of Texas Disparity Study* and to make non-substantive, stylistic changes to improve clarity and general readability.

The agency conducted a public hearing on July 7, 2014, at which several oral questions and statements were received by the agency from individuals in attendance at the hearing. None of the questions or statements related to the proposed amendment, no suggestions were made regarding the proposed amendment, and no commenter stated any position against adoption of the amendment. Rather, the commenters addressed issues and raised questions regarding the Historically Underutilized Business (HUB) Program generally and applicable law, including questions regarding how to apply for HUB certification, the legal requirements for qualification under House Bill 194, estimates regarding how many business may qualify for certification under the new law, concerns regarding protection against fraud in the HUB Program, a question as to whether or not the law passed, and questions regarding the differences between the federal and state programs. Thus, as there were no submissions or proposals made at the hearing pertaining to the rule amendment, there were no submissions or proposals pertaining to the rule amendment with which the agency disagrees. The commenters did not request any specific changes and no changes were made in response.

The agency received a written submission from Carlos A. Balderas, with the Texas Department of Public Safety at the time of submittal, that included several comments and suggestions. In his written submission, Mr. Balderas first expresses concern that use of the phrase "or human being who is not a U.S. citizen" may have long term security ramifications and suggests rewording the language. The agency disagrees with the comment and no change was made. Mr. Balderas generally references, but does not specifically identify any security ramifications. The agency is unaware of any security ramifications and, to the extent any might arise, they would not be cured by a change in the proposed language. The proposed amendment implements House Bill 194 without expanding or going beyond its parameters.

In his written submission, Mr. Balderas then asks to what disabilities House Bill 194 refers and asks the difference between owned and owned, operated, and controlled. House Bill 194 incorporates into the HUB Program certain disabled veterans as defined by federal law. Disabilities encompassed thereby are subject to determination pursuant to federal law, rules, and regulations. Government Code, §2161.001(2) provides a definition of "historically underutilized business" that includes requirements of ownership or ownership, operation, and control based on entity structure. Mr. Balderas did not request any specific changes regarding these issues and no changes were made in response.

In his written submission, Mr. Balderas then asks whether a disparity study was conducted for disabled veterans in Texas and why veterans' goals are included with the current HUB goals. He suggests separating the HUB goals based on the current disparity study from the disabled veterans' goals. The comptroller did not conduct a disparity study for disabled veterans in the State of Texas, as disabled veterans were not eligible for HUB certification in 2009, when the study was done. House Bill 194 did not create a new HUB Program, but rather incorporated certain veterans with certain service-connected disabilities into the definition of economically disadvantaged persons under the existing HUB Program. Pursuant to Government Code, §2161.001(d), the existing goals have been revised to incorporate goals regarding disabled veterans without reducing the goals established based on the disparity study relating to other economically disadvantaged groups. The agency disagrees with the comment and no changes were made in response.

In his written submission, Mr. Balderas also states that changes in wording to §20.14 appears to mandate the use of "the HSP Opportunity Notification Form" and expresses concern regarding the effort involved in notifying individuals regarding HUB notification methods. The agency disagrees with the comment and no changes were made in response. The rule language at issue refers, by its express terms, only to documenting compliance.

Lastly, Mr. Balderas submitted proposed revisions to §20.14, to move §20.14(d)(1)(C) to §20.14(d)(1)(D) and to add additional language to §20.14(d)(2), the latter seemingly to emphasize that only certified HUBs may satisfy the subcontracting requirements of §20.14(d)(1)(D). It would appear that the first proposed revision is intended to ensure that the requirements of §20.14(d)(1)(C) are subject to the same requirements as §20.14(d)(1)(D)(i). The agency agrees that the requirements of §20.14(d)(1)(C) are subject to the same requirements as §20.14(d)(1)(D)(i) and has incorporated revisions to §20.14(d)(1)(C) accordingly. With regard to the second suggested revision, the agency disagrees and no changes were made in response. The apparent concern is addressed by the language in §20.14(d)(1)(C) and §20.14(d)(1)(D), including use of the term "HUB," included in defined terms under §20.11.

These amendments are adopted under Government Code, §2161.0012 and §2161.002, which authorize the comptroller to adopt rules to administer the provisions of Government Code, Chapter 2161, and require the comptroller to adopt rules to provide goals for increasing contract awards for the purchase of goods or services to businesses that qualify as historically underutilized businesses because they are owned or owned, operated, and controlled in whole or in part by certain veterans with certain service-connected disabilities.

These amendments implement Government Code, Chapter 2161.

§20.14. Subcontracts.

(a) Analyzing potential contracts of $100,000 or more. In accordance with Government Code, Chapter 2161, Subchapter F, each state agency that considers entering into a contract with an expected value of $100,000 or more over the life of the contract (including any renewals) shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract.

(1) State agencies shall use the following steps to determine if subcontracting opportunities are probable under the contract:

(A) examining the scope of work to be performed under the proposed contract and determining if it is likely that some of the work may be performed by a subcontractor;

(B) research the Centralized Master Bidders List, the HUB Directory, the Internet, and other directories, identified by the comptroller, for HUBs that may be available to perform the contract work; and

(C) an agency may determine that subcontracting is probable for only a subset of the work expected to be performed or the funds to be expended under the contract. If an agency determines that subcontracting is probable on only a portion of a contract, it shall document its reasons in writing for the procurement file.

(2) In addition, determination of subcontracting opportunities may include, but is not limited to, the following:

(A) contacting other state and local agencies and institutions of higher education to obtain information regarding similar contracting and subcontracting opportunities; and

(B) reviewing the history of similar agency purchasing transactions.

(b) Receipt of HUB subcontracting plans.

(1) If, through the analysis in subsection (a) of this section, an agency determines that subcontracting opportunities are probable, then its invitation for bids, request for proposals or other purchase solicitation documents shall state that probability and require a HUB subcontracting plan. A bid, proposal, offer, or other expression of interest to such a solicitation must include a completed HUB subcontracting plan to be considered responsive.

(2) The HUB subcontracting plan shall be submitted with the respondent's response on or before the due date for responses, except for construction contracts involving alternative delivery methods. For construction contracts involving alternative delivery methods, the HUB subcontracting plan may be submitted up to 24 hours following the date/time that responses are due provided that responses are not opened until the HUB subcontracting plan is received.

(3) Responses that do not include a completed HUB subcontracting plan in accordance with this subsection shall be rejected due to material failure to comply with Government Code, §2161.252(b).

(4) If a properly submitted HUB subcontracting plan contains minor deficiencies (e.g., failure to sign or date the plan, failure to submit already-existing evidence that three HUBs were contacted), the agency may contact the respondent for clarification to the plan if it contains sufficient evidence that the respondent developed and submitted the plan in good faith.

(c) Requirements of a HUB subcontracting plan.

(1) A state agency shall require a respondent to state whether it is a certified HUB. A state agency shall also require a respondent to state overall subcontracting and overall certified HUB subcontracting to be provided in the contract. Respondents shall follow procedures in paragraph (2)(A) - (D) of this subsection when developing the HUB subcontracting plan.

(2) The HUB subcontracting plan shall include the agency's HUB goals for its HUB business plan, and shall consist of completed forms prescribed by the comptroller and shall include the following:

(A) certification that respondent has made a good faith effort to meet the requirements of this section;

(B) identification of the subcontractors that will be used during the course of the contract;

(C) the expected percentage of work to be subcontracted; and

(D) the approximate dollar value of that percentage of work.

(3) The successful respondent shall provide all additional documentation required by the agency to demonstrate compliance with good faith effort requirements prior to contract award. If the successful respondent fails to provide supporting documentation (phone logs, fax transmittals, electronic mail, etc.) within the timeframe specified by the agency to demonstrate compliance with this subsection prior to contract award, that respondent's bid/proposal shall be rejected for material failure to comply with advertised specifications and state law.

(d) Establishing good faith effort by respondent.

(1) Any person submitting a bid, proposal, offer or other applicable expression of interest in obtaining a contract with the state shall submit a completed HUB subcontracting plan demonstrating evidence of good faith effort in developing that plan. Good faith effort shall be shown through utilization of all methods specified below, and in full conformance with all directions for demonstration and submission specified in the HUB subcontracting plan forms prescribed by the comptroller.

(A) Divide the contract work into reasonable lots or portions to the extent consistent with prudent industry practices.

(B) Provide written justification of the selection process if the selected subcontractor is not a HUB.

(C) Provide documentation of meeting one or more of the following requirements:

(i) notify trade organizations or development centers that serve members of groups identified in §20.11(19)(C) of this title (relating to Definitions) according to methods established by the comptroller to assist in identifying HUBs by disseminating subcontracting opportunities to their membership/participants. The notice shall, in all instances, include the scope of work, information regarding location to review plans and specifications, information about bonding and insurance requirements, and identify a contact person. Respondent must provide notice to organizations or development centers no less than seven (7) working days prior to submission of the response unless circumstances require a different time period, which is determined by the agency and documented in the contract file. The respondent must document compliance with this subsection on the forms prescribed by the comptroller in the manner directed on such forms;

(ii) submit documentation that 100% of all available subcontracting opportunities will be performed by one or more HUBs; or

(iii) submit documentation that one or more HUB subcontractors will be utilized and that the total value of those subcontracts will meet or exceed the statewide goal for the appropriate contract category found in §20.13(b) of this title (relating to Statewide Annual HUB Utilization Goals), or the agency-specific goal for the contracting category established by the procuring agency, whichever is higher. When utilizing this demonstration method, HUB subcontractors with which the respondent has existing contracts that have been in place for more than five years can not be claimed for purposes of demonstrating that the applicable goal has been met or exceeded.

(D) Provide documentation of meeting one or more of the following requirements:

(i) notify at least three (3) HUB businesses of the subcontracting opportunities that the respondent intends to subcontract. The respondent shall provide the notice described in this section to three or more HUBs per each subcontracting opportunity that provide the type of work required for each subcontracting opportunity identified in the contract specifications or any other subcontracting opportunity the respondent cannot complete with its own equipment, supplies, materials, and/or employees. The notification shall be in writing, and the respondent must document the HUBs contacted on the forms prescribed by the comptroller. The notice shall, in all instances, include the scope of the work, information regarding the location to review plans and specifications, information about bonding and insurance requirements, and identify a contact person. The notice shall be provided to potential HUB subcontractors at least seven (7) working days prior to submission of the respondent's response, unless circumstances require

a different time period, which is determined by the agency and documented in the contract file;

(ii) submit documentation that 100% of all available subcontracting opportunities will be performed by one or more HUBs; or

(iii) submit documentation that one or more HUB subcontractors will be utilized and that the total value of those subcontracts will meet or exceed the statewide goal for the appropriate contract category found in §20.13(b) of this title, or the agency-specific goal for the contracting category established by the procuring agency, whichever is higher. When utilizing this demonstration method, HUB subcontractors with which the respondent has existing contracts that have been in place for more than five years can not be claimed for purposes of demonstrating that the applicable goal has been met or exceeded.

(2) The respondent shall use the comptroller's Centralized Master Bidders List, the HUB Directory, Internet resources, and/or other directories as identified by the comptroller or the agency when searching for HUB subcontractors. Respondents may utilize the services of minority, women, and community organizations contractor groups, local, state, and federal business assistance offices, and other organizations that provide assistance in identifying qualified applicants for the HUB program who are able to provide all or select elements of the HUB subcontracting plan.

(3) In making a determination if a good faith effort has been made in the development of the required HUB subcontracting plan, a state agency may require the respondent to submit supporting documentation explaining how the respondent has made a good faith effort according to each criterion listed in subsection (c)(2)(A) - (D) of this section. The documentation shall include at least the following:

(A) how the respondent divided the contract work into reasonable lots or portions consistent with prudent industry practices;

(B) how the respondent's notices contain adequate information about bonding, insurance, the availability of plans, the specifications, scope of work, required qualifications and other requirements of the contract allowing reasonable time for HUBs to participate effectively;

(C) how the respondent negotiated in good faith with qualified HUBs, not rejecting qualified HUBs who were also the best value responsive bidder;

(D) how the respondent provided notice to trade organizations or development centers to assist in identifying HUBs by disseminating subcontracting opportunities to their membership/participants;

(E) for contracts subject to paragraph (1)(D)(ii) of this subsection, which HUBs were contracted to perform the subcontracting services for each subcontracting opportunity; and

(F) for contracts subject to paragraph (1)(D)(iii) of this subsection, which contractor(s) were utilized to perform the subcontracting opportunities, and the relevant dates for the respondent's contractual agreements with the contractor(s).

(4) A respondent's participation in a Mentor-Protégé Program under Government Code, §2161.065, and the submission of a protégé as a subcontractor in the HUB subcontracting plan constitutes a good faith effort for the particular area to be subcontracted with the protégé. When submitted, state agencies may accept a Mentor-Protégé Agreement that has been entered into by the respondent (mentor) and a certified HUB (protégé). The agency shall consider the following in determining the respondent's good faith effort:

(A) if the respondent has entered into a fully executed Mentor-Protégé Agreement that has been registered with the comptroller prior to submitting the plan, and

(B) if the respondent's HUB subcontracting plan identifies the areas of subcontracting that will be performed by the protégé.

(5) If the respondent is able to fulfill all of the potential subcontracting opportunities identified with its own equipment, supplies, materials and/or employees, respondent must sign an affidavit and provide a statement explaining how the respondent intends to fulfill each subcontracting opportunity. The respondent must agree to provide the following if requested by the agency:

(A) evidence of existing staffing to meet contract objectives;

(B) monthly payroll records showing company staff fully engaged in the contract;

(C) on site reviews of company headquarters or work site where services are to be performed; and

(D) documentation proving employment of qualified personnel holding the necessary licenses and certificates required to perform the work.

(e) Reviewing the HUB subcontracting plan. The HUB subcontracting plan shall be reviewed and evaluated prior to contract award and, if accepted, shall become a provision of the agency's contract. Revisions necessary to clarify and enhance information submitted in the original HUB subcontracting plan may be made in an effort to determine good faith effort. State agencies shall review the documentation submitted by the respondent to determine if a good faith effort has been made in accordance with this section. If the agency determines that a submitted HUB subcontracting plan was not developed in good faith, the agency shall treat that determination as a material failure to comply with advertised specifications, and the subject response (bid, proposal, offer, or other applicable expression of interest) shall be rejected. The reasons for rejection shall be recorded in the procurement file.

(f) Maintaining records.

(1) Prime contractors shall maintain business records documenting compliance with the HUB subcontracting plan and shall submit a compliance report to the contracting agency monthly, in the format required by the comptroller. The compliance report submission shall be required as a condition for payment.

(2) During the term of the contract, the state agency shall monitor the HUB subcontracting plan monthly to determine if the value of the subcontracts to HUBs meets or exceeds the HUB subcontracting provisions specified in the contract. Accordingly, state agencies shall audit and require a prime contractor to report to the agency the identity and the amount paid to its subcontractors in accordance with §20.16(b) of this title (relating to State Agency Reporting Requirements). If the prime contractor is meeting or exceeding the provisions, the state agency shall maintain documentation of the prime contractor's efforts in the contract file. If the prime contractor fails to meet the HUB subcontracting provisions specified in the contract, the state agency shall notify the prime contractor of any deficiencies. The state agency shall give the prime contractor an opportunity to submit documentation and explain to the state agency why the failure to fulfill the HUB subcontracting plan should not be attributed to a lack of good faith effort by the prime contractor.

(g) Monitoring HUB subcontracting plan during the contract.

(1) If the selected respondent decides to subcontract any part of the contract in a manner that is not consistent with its HUB subcontracting plan, the selected respondent must comply with provisions of this section and submit a revised HUB subcontracting plan before subcontracting any of the work under the contract. If the selected respondent subcontracts any of the work without prior authorization and without complying with this section, the selected respondent is deemed to have breached the contract and is subject to any remedial actions provided by Government Code, Chapter 2161, other applicable state law and this section. Agencies shall report nonperformance relative to its contracts to the comptroller in accordance §20.108 of this title (relating to Vendor Performance Tracking System).

(2) If at any time during the term of the contract, the selected respondent desires to make changes to the approved HUB subcontracting plan, proposed changes must be received for prior review and approval by the state agency before changes will be effective under the contract. The selected respondent must comply with provisions of this section, relating to developing and submitting a subcontracting plan for substitution of work or of a subcontractor, prior to any alternatives being approved under the HUB subcontracting plan. The state agency shall approve changes by amending the contract or by another form of written agency approval. The reasons for amendments or other written approval shall be recorded in the procurement file.

(3) If a state agency expands the original scope of work through a change order or contract amendment, including a contract renewal that expands the scope of work, the state agency shall determine if the additional scope of work contains additional probable subcontracting opportunities not identified in the initial solicitation. If the agency determines probable subcontracting opportunities exist, the agency will require the selected respondent to submit a HUB subcontracting plan/revised HUB subcontracting plan for the additional probable subcontracting opportunities.

(4) To determine if the prime contractor is complying with the HUB subcontracting plan, the agency may consider the following:

(A) whether the prime contractor gave timely notice to the subcontractor regarding the time and place of the subcontracted work;

(B) whether the prime contractor facilitated access to the resources needed to complete the work; and

(C) whether the prime contractor complied with the approved HUB subcontracting plan.

(5) If a determination is made that the prime contractor failed to implement the HUB subcontracting plan in good faith, the agency, in addition to any other remedies, may report nonperformance to the comptroller in accordance with §20.105 of this title (relating to Debarment) and §20.106 of this title (relating to Procedures for Investigations and Debarment). In addition, if the prime contractor failed to implement the HUB subcontracting plan in good faith, the agency may revoke the contract for breach of contract and make a claim against the prime contractor.

(6) State agencies shall review their procurement procedures to ensure compliance with this section.

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 2, 2014.

TRD-201404189
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: September 22, 2014
Proposal publication date: July 4, 2014
For further information, please call: (512) 475-0387

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Texas Appraiser Licensing and Certification Board

Title 22, Part 8

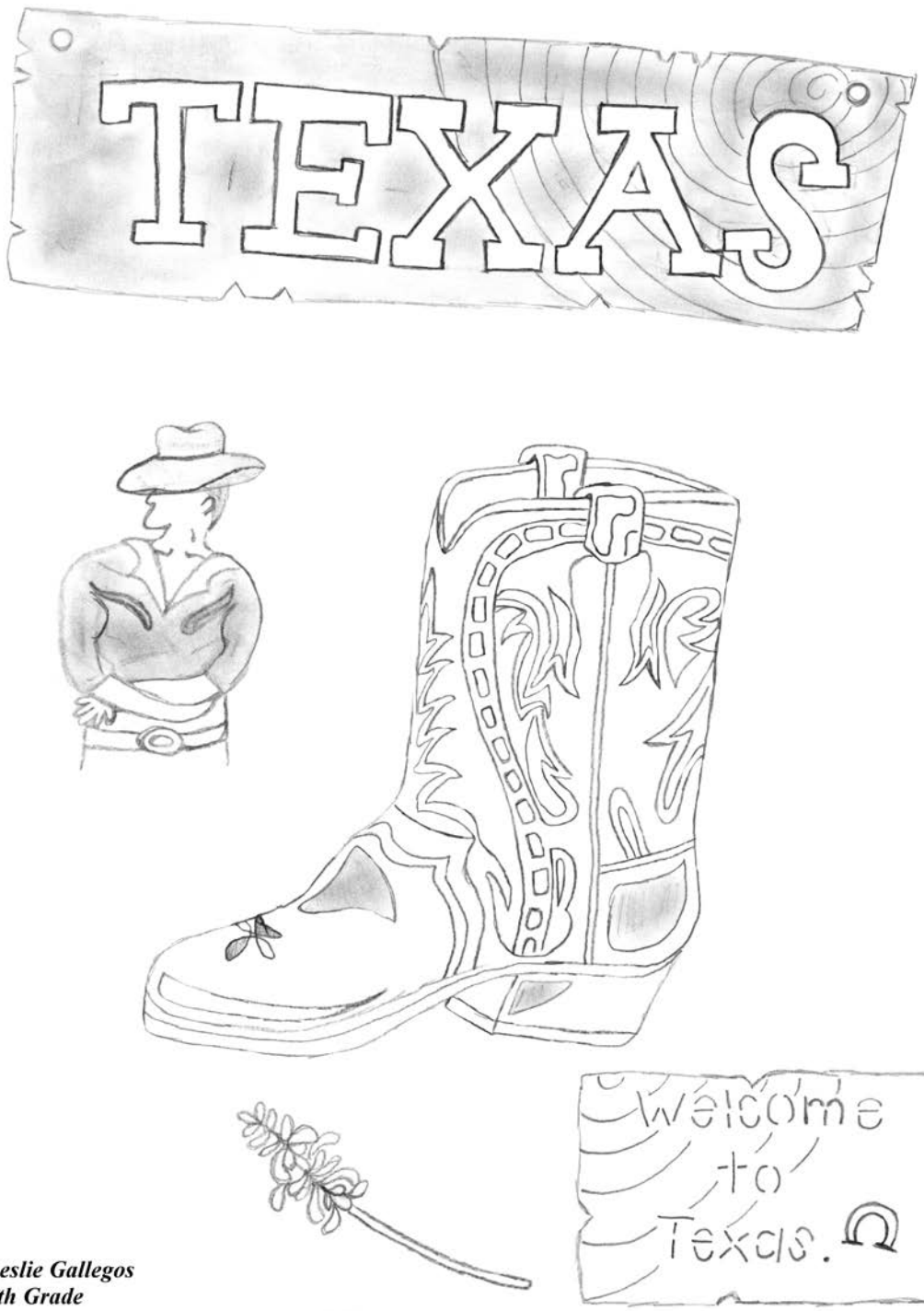
In accordance with Texas Government Code §2001.039, the Texas Appraiser Licensing and Certification Board (TALCB) has concluded its review of Texas Administrative Code (TAC), Title 22, Part 8, Chapter 153, Rules Relating to Provisions of the Texas Appraiser Licensing and Certification Act. The notice of proposed rule review was published in the March 14, 2014, issue of the *Texas Register* (39 TexReg 1939).

TALCB has determined that the reasoned justification for adopting 22 TAC Chapter 153 continues to exist. Furthermore, the review process may indicate that a specific rule needs to be amended to further refine or better reflect current TALCB procedures and policy considerations, or that rules be combined or reduced for simplification and clarity. Accordingly, TALCB adopts 22 TAC Chapter 153 as proposed in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4083) and published under the Adopted Rules section of the August 29, 2014, issue of the *Texas Register* (39 TexReg 6857).

No comments were received regarding TALCB's notice of review. This notice concludes TALCB's review of 22 TAC Chapter 153.

TRD-201404272
Kristen Worman
General Counsel
Texas Appraiser Licensing and Certification Board
Filed: September 8, 2014

♦ ♦ ♦



Leslie Gallegos
7th Grade

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 10 TAC §10.624

Noncompliance Event	Program(s)	If HTC, on Form 8823?
Violations of the Uniform Physical Condition Standards	All Programs	Yes
Noncompliance related to Affirmative Marketing requirements described in §10.617 of this chapter	All Programs	No
Development is not available to the general public because of leasing issues	HTC	Yes
TDHCA has received notice of possible Fair Housing Act Violation from HUD or DOJ and reported general public use violation in accordance with IRS 8823 Audit Guide Chapter 13	HTC	Yes
TDHCA has referred unresolved Fair Housing Design and Construction issue to the Texas Workforce Commission Civil Rights Division	All programs	No
Property has gone through a foreclosure	All programs	Yes
Property is never expected to comply due to failure to report or allow monitoring	All programs	yes
Owner did not allow on-site monitoring or failed to notify residents resulting in inspection cancelation	All programs	Yes
LURA not in effect	All programs	Yes
Project failed to meet minimum set aside	HTC and Bonds	Yes
No evidence of, or failure to certify to material participation of a non-profit or HUB, if required by LURA	HTC	Yes, if non-profit issue, No if HUB issue
Development failed to meet additional state required rent and occupancy restrictions	All programs	No
Noncompliance with social service requirements	HTC and Bond	No
Development failed to provide housing to the elderly as promised at application	All programs	No
Failure to provide special needs housing as required by LURA	All programs	No
Changes in Eligible Basis or Applicable percentage	HTC	Yes
Failure to submit all or parts of the Annual Owner's Compliance Report	All programs	Yes for part A, No for other parts
Failure to submit quarterly reports as required by §10.607	All programs	No
Noncompliance with utility allowance requirements described in §10.614 of this subchapter and/or Treasury Regulation §1.42-10	All programs	Yes if rent exceeds limit, no if related to noncompliance with other requirements, such as posting, updating etc.

Noncompliance with lease requirements described in §10.613 of this subchapter	All programs	No
Asset Management Division has reported that Development has failed to establish and maintain a reserve account in accordance with §10.405 of this chapter	All programs	No
Failure to provide a notary public as promised at application	HTC	No
Violation of the Unit Vacancy Rule	HTC	Yes
Casualty Loss	All programs	Yes
Failure to provide pre-onsite documentation	All programs	No
Failure to provide amenity as required by LURA	HTC	No
Failure to pay asset management, compliance monitoring or other required fee	HTC, TCAP, Bond, Exchange and HOME Developments committed funds after August 23, 2013	No
Change in ownership without department approval (other than removal of a general partner in accordance with §10.406 of this chapter)	All programs	No
Failure to provide fair housing disclosure notice	All programs	No
Noncompliance with tenant selection requirements described in §10.610 of this subchapter	All programs	No, unless finding is because Owner refused to lease to Section 8 households
Program Unit not leased to Low-Income household	All programs	Yes
Program unit occupied by nonqualified full-time students	HTC during the Compliance Period, Bond and HOME developments committed funds after August 23, 2013	Yes
Low-Income units used on a transient basis	HTC and Bond	Yes
Violation of the Available Unit Rule	All programs, but only during the Compliance Period for HTC, TCAP and Exchange	Yes
Gross rent exceeds the highest rent allowed under the LURA or other deed restriction	All programs	Yes
Failure to provide Tenant Income Certification and documentation	All programs	Yes
Unit not available for rent	All programs	Yes
Failure to collect data required by §10.612(b)(1) and/or §10.612(b)(2)	HTC, TCAP Exchange and Bond	No

Development evicted or terminated the tenancy of a low-income tenant for other than good cause	HTC, HOME and NSP	Yes
Household income increased above 80 percent at recertification and Owner failed to properly determine rent	HOME	NA
Violation of the Integrated Housing Rule	All programs	No
Failure to resolve final construction deficiencies within corrective action period	All programs	No
Noncompliance with the accessibility requirements of §504 of the Rehabilitation Act of 1973 and 10 TAC Chapter 1, Subchapter B	HOME, NSP and HTC properties awarded after 2001	No
Noncompliance with the notice to the Department requirements described in §10.609 of this subchapter	All programs	No

Figure: 10 TAC §11.2

Deadline	Documentation Required
01/02/2015 [1/02/2014]	Application Acceptance Period Begins.
01/13/2015 [01/16/2014]	Pre-Application Final Delivery Date (including pre-clearance and waiver requests).
02/27/2015 [02/28/2014]	Full Application Delivery Date (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Property Condition Assessments (PCAs); Appraisals; Primary Market Area Map [Market Analysis Summary]; Site Design and Development Feasibility Report; and all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors).
04/01/2015 [04/01/2014]	Final Input from Elected Officials Delivery Date (including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5) of this chapter (after opportunity to review materially complete Applications)). Market Analysis Delivery Date pursuant to §10.205 of this title. Site Challenges Delivery Date.
05/01/2015 [05/01/2014]	Challenges to Neighborhood Organization Opposition Delivery Date.
05/01/2015 [05/07/2014]	Application Challenges Deadline.
Mid-May	Final Scoring Notices Issued for Majority of Applications Considered "Competitive."
06/12/2015 [06/13/2014]	Deadline for public comment to be included in a summary to the Board at a posted meeting.
June	Release of Eligible Applications for Consideration for Award in July.
July	Final Awards.
Mid-August	Commitments are Issued.
11/02/2015 [11/03/2014]	Carryover Documentation Delivery Date.

Deadline	Documentation Required
07/01/2016 [07/01/2015]	10 Percent Test Documentation Delivery Date.
12/31/2017 [12/31/2016]	Placement in Service.
Five (5) business days after the date on the Deficiency Notice (without incurring point loss)	Administrative Deficiency Response Deadline (unless an extension has been granted).

Figure: 22 TAC §1.232(j)

Violation	Rule(s) Cited	Recommended Penalty
Unauthorized duplication of certificate of registration or failure to display certificate of registration as required	§1.62	Administrative penalty or reprimand
Unlawful practice of architecture while registration is on emeritus status	§1.67(b)	Administrative penalty and cease and desist order
Practice of architecture while registration is inactive	§1.68	Administrative penalty and cease and desist order
Failure to fulfill mandatory continuing education requirements	§1.69	Administrative penalty or suspension
Failure to timely complete required continuing education program hours	§1.69(b)	Administrative penalty of $500; subject to higher penalties or suspension for second or subsequent offenses
Falsely reporting compliance with mandatory continuing education requirements	§1.69(g)	Administrative penalty of $700; subject to higher penalties or suspension for second or subsequent offenses
Failure to use appropriate seal or signature	§1.102 §1.104(c)	Administrative penalty or reprimand
Failure to seal documents	§1.103 §1.105 §1.122(c),(e)	Administrative penalty or reprimand
Failure to mark documents issued for purposes other than regulatory approval, permitting or construction as required	§1.103(b)	Administrative penalty or reprimand
Sealing or authorizing the sealing of a document prepared by another without Supervision and Control or Responsible Charge – "plan stamping"	§1.104(a) and (b) §1.122(c) and (e)	Suspension or revocation
Failure to take reasonable steps to notify sealing Architect of intent to modify that architect's sealed documents	§1.104(d)	Administrative penalty or reprimand
Failure to indicate modifications or additions to a document prepared by another Architect	§1.104(b) and (d)	Suspension, administrative penalty, or reprimand
Removal of seal after issuance of documents	§1.104(e)	Administrative penalty or reprimand
Failure to maintain a document for 10 years as required	§1.103(g) §1.105(b) §1.122(d)	Administrative penalty or reprimand
Unauthorized use of a seal or a copy or replica of a seal or unauthorized modification of a document	§1.104(b) and (c)	Administrative penalty, reprimand, or suspension
Violation of requirements regarding prototypical design	§1.105	Administrative penalty, reprimand, or suspension
Failure to provide Statement of Jurisdiction	§1.106	Administrative penalty or reprimand
Failure to enter into a written agreement of association when required	§1.122	Administrative penalty or reprimand
Failure to exercise Supervision and Control over the preparation of a document as required	§1.122(c)	Suspension, revocation, or refusal to renew registration

Failure to exercise Responsible Charge over the preparation of a document as required	§1.122(e)	Suspension, revocation, or refusal renew registration
Failure of a firm, business entity, or association to register	§1.124(a) and (b)	Administrative penalty, cease and desist order, or both
Failure to timely notify the Board upon dissolution of a business entity or association of loss of lawful authority to offer or provide architecture	§1.124(c)	Administrative penalty, reprimand, or suspension
Offering or rendering the Practice of Architecture by and through a firm, business entity or association that is not duly registered	§1.124 §1.146(a)(2)(B)	Administrative penalty, cease and desist order, or both
Gross incompetency	§1.142	Suspension, revocation, or refusal to renew registration
Recklessness	§1.143	Suspension, revocation, or refusal to renew registration
Dishonest practice	§1.144(a), (c)	Suspension revocation, or refusal to renew registration
Offering, soliciting or receiving anything or any service as an inducement to be awarded publicly funded work	§1.144(b)	Suspension, or revocation, and payment of restitution
Conflict of interest	§1.145	Suspension, revocation, or refusal to renew registration
Participating in a plan, scheme or arrangement to violate the Act or rules of the Board	§1.146(a)	Administrative penalty, suspension, revocation, or refusal to renew registration
Failure to provide information regarding an Applicant upon request; failure to report lost, stolen or misused architectural seal	§1.146(b), (c)	Administrative penalty or reprimand
Submission of a competitive bid in violation of the Professional Services Procurement Act	§1.147	Suspension or revocation
Disclosure of fee information inconsistent with the Professional Services Procurement Act	§1.147	Administrative penalty or reprimand
Disclosure of information with the intent to indirectly disclose fee information	§1.147	Suspension or revocation
Unauthorized practice or use of title "architect"	§1.123 §1.148	Administrative penalty, denial of registration, or refusal to renew, reinstate, or reactivate registration
Criminal conviction	§1.149	Suspension or revocation
Gross incompetence caused by substance abuse	§1.150	Indefinite suspension until respondent demonstrates terminating suspension will not imperil public safety
Violation by Applicant regarding unlawful use title "architect", unlawful practice, or criminal convictions	§1.148 §1.149 §1.151	Reprimand, administrative penalty, suspension, rejection, denial of right to reapply, or probationary initial registration
Failure to submit a document as required by the Architectural Barriers Act	§1.170	Reprimand or administrative penalty
Failure to respond to a Board inquiry	§1.171	Administrative penalty

Unregistered individual engaging in construction observation for a nonexempt building	§1.217	Administrative penalty, reprimand, denial registration or refusal to renew, reinstate, or reactivate registration
Failure to report course of action likely to have material adverse effect on safe use of building or failure to refuse to consent to the course of action	§1.216	Suspension, revocation or refusal to renew registration

Figure: 22 TAC §3.232(j)

Violation	Rule(s) Cited	Recommended Penalty
Unauthorized duplication of certificate of registration or failure to display certificate of registration as required	§3.62	Administrative penalty or reprimand
Unlawful practice of landscape architecture while registration is on emeritus status	§3.67(b)	Administrative penalty and cease and desist order
Practice of landscape architecture while registration is inactive	§3.68	Administrative penalty
Failure to fulfill mandatory continuing education requirements	§3.69	Administrative penalty or suspension
Failure to timely complete required continuing education program hours	§3.69(b)	Administrative penalty of $500; subject to higher penalties or suspension for second or subsequent offenses
Falsely reporting compliance with mandatory continuing education requirements	§3.69(g)	Administrative penalty of $700; subject to higher penalties or suspension for second or subsequent offenses
Failure to use appropriate seal or signature	§3.102 §3.104(c)	Administrative penalty or reprimand
Failure to seal documents	§3.103 §3.105 §3.122(c), (e)	Administrative penalty or reprimand
Failure to mark documents issued for purposes other than regulatory approval, permitting or construction as required	§3.103(b)	Administrative penalty or reprimand
Sealing or authorizing the sealing of a document prepared by another without Supervision and Control or Responsible Charge – "plan stamping"	§3.104(a) and (b) §3.122(c) and (e)	Suspension or revocation
Failure to take reasonable steps to notify sealing Landscape Architect or intent to modify that Landscape Architect's sealed documents	§3.104(d)	Administrative penalty or reprimand
Failure to indicate modifications or additions to a document prepared by another Landscape Architect	§1.104(e)	Administrative penalty or reprimand
Removal of seal after issuance of documents	§3.104(e)	Administrative penalty or reprimand
Failure to maintain a document for 10 years as required	§3.103(g) §3.105(b) §3.122(d)	Administrative penalty or reprimand
Unauthorized use of a seal or a copy of a seal or unauthorized modification of a document	§3.104(b) and (c)	Administrative penalty, reprimand or suspension
Violation of requirements regarding prototypical design	§3.105	Administrative penalty, reprimand or suspension
Failure to provide Statement of Jurisdiction	§3.105	Administrative penalty or reprimand
Failure to report a course of action taken against the respondent's advice as required	§3.106(d)	Suspension, revocation or refusal to renew registration
Failure to enter into a written agreement of association when required	§3.122	Administrative penalty or reprimand

Failure to exercise Supervision and Control over the preparation of a document as required	§3.122(c)	Suspension, revocation, or refusal to renew registration
Failure to exercise Responsible Charge over the preparation of a document as required	§3.122(e)	Suspension, revocation, or refusal to renew registration
Failure of a firm, business entity, or association to register	§3.124(a) and (b)	Administrative penalty, cease and desist order, or both
Failure to timely notify the Board upon dissolution of a business entity or association of loss of lawful authority to offer or provide landscape architecture	§3.124(c)	Administrative penalty, reprimand, or suspension
Offering or rendering Landscape Architecture by and through a firm, business entity or association that is not duly registered	§3.124 §3.146(a)(2)(B)	Administrative penalty, cease and desist order, or both
Gross incompetency	§3.142	Suspension, revocation, or refusal to renew registration
Recklessness	§3.143	Suspension, revocation, or refusal to renew registration
Dishonest practice	§3.144(a), (c)	Suspension ~~or~~ revocation, or refusal to renew registration
Offering, soliciting or receiving anything or any service as an inducement to be awarded publicly funded work	§3.144(b)	Suspension or revocation and payment of restitution
Conflict of interest	§3.145	Suspension, revocation, or refusal to renew registration
Participating in a plans, scheme or arrangement to violate the Act or the rules of the Board	§3.146(a)	Administrative penalty, suspension, revocation, or refusal to renew registration
Failure to provide information regarding an Applicant upon request; failure to report lost, stolen or misused landscape architectural seal	§3.146(b), (c)	Administrative penalty or reprimand
Submission of a competitive bid in violation of the Professional Services Procurement Act	§3.147	Suspension or revocation
Disclosure of fee information inconsistent with the Professional Services Procurement Act	§3.147	Administrative penalty or reprimand
Disclosure of information with the intent to indirectly disclose fee information	§3.147	Suspension or revocation
Unauthorized practice or use of title "landscape architect"	§3.123 §3.148	Administrative penalty, denial of registration, or refusal to renew, reinstate, or reactivate registration
Criminal conviction	§3.149	Suspension or revocation
Gross incompetence caused by substance abuse	§1.150	Indefinite suspension until respondent demonstrates terminating suspension will not imperil public safety
Violation by Applicant regarding unlawful of title "landscape architect", unlawful practice, or criminal convictions	§3.148 §3.149 §3.151	Reprimand, administrative penalty, suspension, rejection, denial of right to reapply, or probationary initial registration
Failure to submit a document as required	§3.170	Reprimand or administrative penalty

by the Architectural Barriers Act		
Failure to respond to a Board inquiry	§3.171	Administrative penalty

Figure: 22 TAC §5.242(j)

Violation	Rule(s) Cited	Recommended Penalty
Unauthorized duplication of certificate of registration or failure to display certificate of registration as required	§5.72	Administrative penalty or reprimand
Using the title "Registered Interior Designer" while on emeritus status	§5.77(b)	Administrative penalty and cease and desist order
Practice of Interior Design while registration is inactive	§5.78	Administrative penalty and cease and desist order
Failure to fulfill mandatory continuing education requirements	§5.79	Administrative penalty or suspension
Failure to timely complete required continuing education program hours	§5.79(b)	Administrative penalty of $500; subject to higher penalties or suspension for second or subsequent offenses
Falsely reporting compliance with mandatory continuing education requirements	§5.79(g)	Administrative penalty of $700; subject to higher penalties for second or subsequent offenses
Failure to use appropriate seal or signature	§5.112 §5.114(c)	Administrative penalty or reprimand
Failure to seal documents	§5.113 §5.132(c) and (e)	Administrative penalty or reprimand
Failure to mark documents issued for purposes other than regulatory approval, permitting or construction as required	§5.113(b)	Administrative penalty or reprimand
Sealing or authorizing the sealing of a document prepared by another without Supervision and Control	§5.114(a) and (b) §5.132(c) and (e)	Suspension or revocation
Failure to take reasonable steps to notify sealing Registered Interior Designer of intent to modify sealed documents	§5.114(d)	Administrative penalty or reprimand
Failure to indicate modifications to or portion of document prepared by Registered Interior Designer	§5.114(b) and (d)	Suspension, administrative penalty or reprimand
Removal of seal after issuance of documents	§5.114(e)	Administrative penalty or reprimand
Failure to maintain a document for 10 years as required	§5.113(c) §5.132(d)	Administrative penalty or reprimand
Unauthorized use of a seal or a copy of a seal or unauthorized modification of a document	§5.114(b) and (c)	Administrative penalty, reprimand, or suspension
Failure to provide Statement of Jurisdiction	§5.115(a)	Administrative penalty or reprimand
Failure to report a course of action taken against the respondent's advice as required	§5.115(d)	Suspension, revocation or refusal to renew registration
Failure to enter into a written agreement of association when required	§5.132	Administrative penalty or reprimand
Failure to exercise Supervision and Control over the	§5.132(c)	Suspension, revocation, or refusal to renew

preparation of a document as required		registration
Failure to exercise Responsible Charge over the preparation of a document as required	§5.132(e)	Suspension, revocation, or refusal to renew registration
Failure of a firm, business entity, or association to register	§5.134(a) and (b)	Administrative penalty or reprimand
Failure to timely notify the Board upon dissolution of a business entity or association or upon loss of the entity or association to use the title "registered interior designer"	§5.134(c)	Administrative penalty, cease and desist order, or both
Representing firm, business entity or association which is not registered as Registered Interior Designer firm	§5.134	Administrative penalty, cease and desist order, or both
Gross incompetency	§5.152	Suspension, revocation, or refusal to renew registration
Recklessness	§5.153	Suspension, revocation, or refusal to renew registration
Dishonest practice	§5.154(a), (c)	Suspension, revocation, or refusal to renew registration
Offering, soliciting or receiving anything or any service as an inducement to be awarded publicly funded work	§5.154(b)	Suspension or revocation and payment of restitution
Conflict of interest	§5.155	Suspension, revocation or refusal to renew registration
Participating in a plan, scheme, or arrangement to violate the Act or rules of the Board	§5.156(a)	Administrative penalty, suspension, revocation, or refusal to renew registration
Failure to provide information regarding an Applicant upon request; failure to report lost, stolen, or misused registered interior design seal	§5.156(b), (c)	Administrative penalty or reprimand
Unauthorized practice or use of title "registered interior designer"	§5.133 §5.157	Administrative penalty, denial of registration, or refusal to renew, reinstate, or reactive registration
Criminal conviction	§5.158	Suspension or revocation
Gross incompetency caused by substance abuse	§5.159	Indefinite suspension until respondent demonstrates terminating suspension will not imperil public safety
Violation by Applicant regarding unlawful use of the title "registered interior designer, unlawful practice or criminal convictions	§5.157 §5.158 §5.160	Reprimand, administrative penalty, suspension, rejection, denial of right to reapply, or probationary initial registration
Failure to submit a document as required by the Architectural Barriers Act	§5.180	Reprimand or administrative penalty
Failure to respond to a Board inquiry	§5.181	Administrative penalty

Figure: 34 TAC §2.104(l)

Reduction to Fund Available for Disbursement based on Lower Attendance

Percent Lower*	Fund Reduction
15 – 25%	- 15%
25 – 35%	- 25%
35% +	- 35%

*Percentage by which actual attendance at event is lower than estimated attendance used to determine incremental increase.

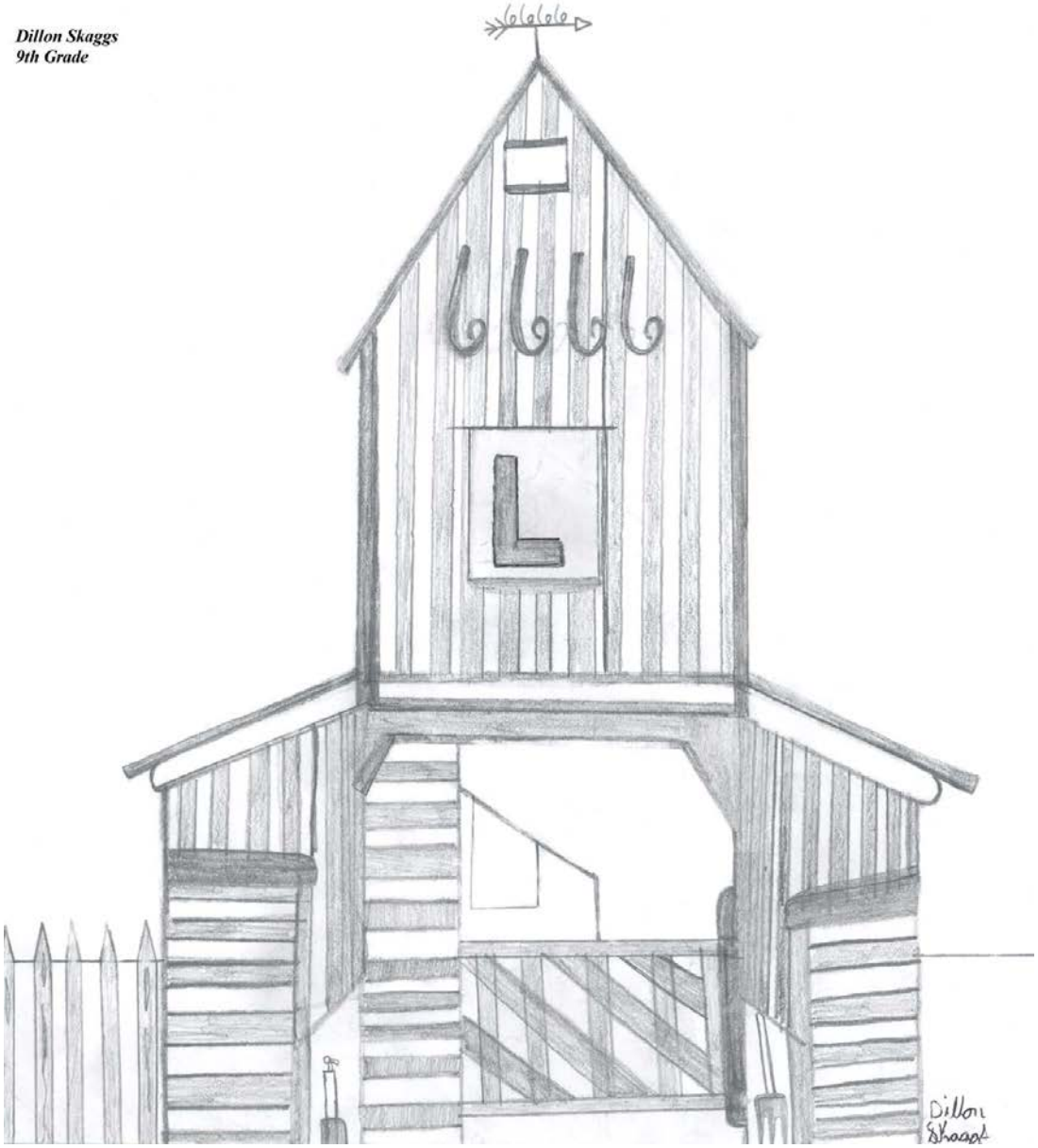
Figure: 34 TAC §2.204(l)

Reduction to Fund Available for Disbursement based on Lower Attendance

Percent Lower*	Fund Reduction
15 – 25%	- 15%
25 – 35%	- 25%
35 – 45%	- 35%
45% +	Actual percentage, up to 80% reduction

*Percentage by which actual attendance at event is lower than estimated attendance used to determine incremental increase.

Dillon Skaggs
9th Grade



Cancer Prevention and Research Institute of Texas

Request for Applications (RFA) R-15-REI-2

Recruitment of Established Investigators

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks applications from eligible organizations for the Recruitment of Established Investigators. The aim of this award mechanism is to bolster cancer research in Texas by providing financial support to attract world class research scientists with distinguished professional careers to Texas universities and cancer research institutes to establish research programs that add research talent to the State. This award will support established academic leaders whose body of work has made an outstanding contribution to cancer research. Awards are intended to provide institutions with a competitive edge in recruiting the world's best talent in cancer research, thereby advancing cancer research efforts and promoting economic development in the State of Texas. The recruitment of outstanding scientists will greatly enhance programs of scientific excellence in cancer research and will position Texas as a leader in the fight against cancer. Applications may address any research topic related to cancer biology, causation, prevention, detection or screening, or treatment.

The maximum amount that may be requested by applicant institutions is $6 million (total costs) for a 5-year period.

Applications will be accepted beginning at 7:00 a.m. Central Time on Tuesday, September 2, 2014, through 3:00 p.m. Central Time on Monday, August 31, 2015. Applications will be reviewed and approved continuously throughout Fiscal Year 2015. Only applications submitted via the CPRIT Application Receipt System (www.CPRITGrants.org) portal will be considered eligible for evaluation. A detailed Request for Applications (RFA) is available online at www.cprit.state.tx.us.

TRD-201404233
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Filed: September 4, 2014

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Request for Applications (RFA) R-15-RFT-2

Recruitment of First-Time Tenure-Track Faculty Members

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks applications from eligible organizations for the Recruitment of First-Time Tenure-Track Faculty Members. The aim of this award mechanism is to bolster cancer research in Texas by providing financial support to attract very promising investigators who are pursuing their first faculty appointment at the level of assistant professor (first-time, tenure-track faculty members). These individuals must have demonstrated academic excellence, innovation during predoctoral and/or postdoctoral research training, commitment to pursuing cancer research, and exceptional potential for achieving future impact in basic, translational, population-based, or clinical research. Awards are intended to provide institutions with a competitive edge in recruiting the world's best talent in cancer research, thereby advancing cancer research efforts and promoting economic development in the State of Texas. The recruitment of outstanding scientists will greatly enhance programs of scientific excellence in cancer research and will position Texas as a leader in the fight against cancer. Applications may address any research topic related to cancer biology, causation, prevention, detection or screening, or treatment.

The maximum amount that may be requested by applicant institutions is $2,000,000 (total costs) for a 4-year period.

Applications will be accepted beginning at 7:00 a.m. Central Time on Tuesday, September 2, 2014, through 3:00 p.m. Central Time on Monday, August 31, 2015. Applications will be reviewed and approved continuously throughout Fiscal Year 2015. Only applications submitted via the CPRIT Application Receipt System (www.CPRITGrants.org) portal will be considered eligible for evaluation. A detailed Request for Applications (RFA) is available online at www.cprit.state.tx.us.

TRD-201404234
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Filed: September 4, 2014

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Request for Applications (RFA) R-15-RRS-2

Recruitment of Rising Stars

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks applications from eligible organizations for the Recruitment of Rising Stars. The aim of this award mechanism is to bolster cancer research in Texas by providing financial support to attract individuals whose work has outstanding merit, who show a marked capacity for self-direction, and who demonstrate the promise for continued and enhanced contributions to the field of cancer research ("Rising Stars"). Awards are intended to provide institutions with a competitive edge in recruiting the world's best talent in cancer research, thereby advancing cancer research efforts and promoting economic development in the State of Texas. The recruitment of outstanding scientists will greatly enhance programs of scientific excellence in cancer research and will position Texas as a leader in the fight against cancer. Applications may address any research topic related to cancer biology, causation, prevention, detection or screening, or treatment.

The maximum amount that may be requested by applicant institutions is $4,000,000 (total costs) over a 5-year period.

Applications will be accepted beginning at 7:00 a.m. Central Time on Tuesday, September 2, 2014, through 3:00 p.m. Central Time on Monday, August 31, 2015. Applications will be reviewed and approved continuously throughout Fiscal Year 2015. Only applications submitted via the CPRIT Application Receipt System (www.CPRITGrants.org) portal will be considered eligible for evaluation. A detailed Request for Applications (RFA) is available online at www.cprit.state.tx.us.

TRD-201404235
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Filed: September 4, 2014

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Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective October 1, 2014

A one percent local sales and use tax will become effective October 1, 2014, in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Appleby (Nacogdoches Co)	2174055	.020000	.082500

The 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 abolished, effective September 30, 2014, in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Tatum (Panola Co)	2201034	.015000	.077500
Tatum (Rusk Co)	2201034	.015000	.077500
Trinidad (Henderson Co)	2107039	.015000	.077500

The additional 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, effective September 30, 2014 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Aubrey (Denton Co)	2061051	.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, 2014 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Annetta (Parker Co)	2184099	.020000	.082500
Rogers (Bell Co)	2014059	.020000	.082500
Shavano Park (Bexar Co)	2015209	.020000	.082500
Terrell Hills (Bexar Co)	2015076	.017500	.080000

An additional 1/4 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 become effective October 1, 2014 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Fayetteville (Fayette Co)	2075037	.020000	.082500

An additional 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 become effective October 1, 2014 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Lakeport (Gregg Co)	2092072	.020000	.082500

The additional 1/2 percent sales and use tax for property tax relief will be reduced to 3/8 percent and the adoption of 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 Corporation will become effective October 1, 2014 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
Mineral Wells (Palo Pinto Co)	2182019	.020000	.082500
Mineral Wells (Parker Co)	2182019	.020000	.082500

The additional 1/4 percent sales and use tax for property tax relief will be abolished effective September 30, 2014 and the adoption of 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, 2014 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
Pecos (Reeves Co)	2195014	.020000	.082500

The 1/2 percent special purpose district sales and use tax will be abolished effective September 30, 2014 in the Special Purpose District listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Iowa Colony Crime Control District	5020514	.000000	.062500

A 1/4 percent special purpose district sales and use tax will become effective October 1, 2014 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Annetta Crime Control District	5184525	.002500	SEE NOTE 1
Rogers Municipal Development District	5014512	.002500	SEE NOTE 2
Tuscola Municipal Development District	5221502	.002500	SEE NOTE 3

A 1/2 percent special purpose district sales and use tax will become effective October 1, 2014 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Aubrey Municipal Development District	5061676	.005000	SEE NOTE 4
East Montgomery Co Improvement District EDZ No. 3	5170754	.005000	SEE NOTE 5
East Montgomery Co Improvement District EDZ No. 4	5170763	.005000	SEE NOTE 6
Lucas Fire Control and Prevention District	5043517	.005000	SEE NOTE 7
Tuscola Crime Control District	5221511	.005000	SEE NOTE 8

A one percent special purpose district sales and use tax will become effective October 1, 2014 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Harris County Emergency Services District No. 48	5101918	.010000	SEE NOTE 9
Montgomery County Emergency Services District No. 10	5170745	.010000	SEE NOTE 10
Travis County Emergency Services District No. 2-A	5227695	.010000	SEE NOTE 11

A 1 1/2 percent special purpose district sales and use tax will become effective October 1, 2014 in the special purpose district listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Port O'Connor Improvement District	5029515	.015000	SEE NOTE 12

NOTE 1: The boundaries of the Annetta Crime Control District are the same as the boundaries for the city of Annetta.

NOTE 2: The Rogers Municipal Development District has the same boundaries as the Rogers extra-territorial jurisdiction (ETJ), which includes the city of Rogers. Contact the district representative at 254-642-3312 for additional boundary information.

NOTE 3: The Tuscola Municipal Development District has the same boundaries as the Tuscola extra-territorial jurisdiction (ETJ), which includes the city of Tuscola. Contact the district representative at 325-554-7766 for additional boundary information.

NOTE 4: The Aubrey Municipal Development District has the same boundaries as the Aubrey extra-territorial jurisdiction (ETJ), which includes the city of Aubrey. Contact the district representative at 940-440-9343 for additional boundary information.

NOTE 5: The East Montgomery County Improvement District Economic Development Zone No. 3 is located in the eastern portion of Montgomery County. The zone is located entirely within the East Montgomery County Improvement District A which has a special purpose district sales and use tax. The unincorporated area of Montgomery County in ZIP Code 77357 is partially located within the East Montgomery County Improvement District Economic Development Zone No. 3. Contact the district representative at 281-354-4419 for additional boundary information.

NOTE 6: The East Montgomery County Improvement District Economic Development Zone No. 4 is located in the eastern portion of Montgomery County. The zone is located entirely within the East Montgomery County Improvement District A which has a special purpose district sales and use tax. The unincorporated area of Montgomery County in ZIP Code 77372 is partially located within the East Montgomery County Improvement District Economic Development Zone No. 4. Contact the district representative at 281-354-4419 for additional boundary information.

NOTE 7: The boundaries of the Lucas Fire Control and Prevention District are the same as the boundaries for the city of Lucas.

NOTE 8: The boundaries of the Tuscola Crime Control District are the same as the boundaries for the city of Tuscola.

NOTE 9: The Harris County Emergency Services District No. 48 is located in the western portion of Harris County. The district's boundaries for the imposition of sales and use tax exclude areas of the district which are 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. The district is located within the Houston MTA, which imposes a transit sales and use tax. The unincorporated areas of Harris County in ZIP Codes 77449, 77450, 77493 and 77494 are partially located in the Harris County Emergency Services District No. 48. Contact the district representative at 713-984-8222 for additional boundary information.

NOTE 10: The Montgomery County Emergency Services District No. 10 is located in the southwest portion of Montgomery County. District boundaries exclude any area of the city of Magnolia and the Westwood Magnolia Parkway Improvement District. The city of Stagecoach, which has a city sales and use tax is located within the district. The unincorporated areas of Montgomery County in ZIP Codes 77316, 77354, 77355, 77362, 77384 and 77447 are partially located in the Montgomery County Emergency Services District No. 10. Contact the district representative at 713-984-8222 for additional boundary information.

NOTE 11: The Travis County Emergency Services District No.2-A is the unincorporated portion of the original district excluding the area within the Wells Branch Library District. The Travis County Emergency Services District No. 2-A is also in the Austin MTA which imposes a transit sales and use tax. Unincorporated areas of Travis County in ZIP Codes 78615, 78634, 78653, 78660, 78664, 78691, 78728, 78753 and 78754 are partially located within the district. Contact the district representative at 512-251-2801 for additional boundary information.

NOTE 12: The Port O Connor Improvement District is located in the eastern portion of Calhoun County, which has a county sales and use tax, on the coast of the Gulf of Mexico. The unincorporated areas of Calhoun County in ZIP Code 77982 are partially located within the district. Contact the district representative at 361-983-2652 for additional boundary information.

[graphic]

TRD-201404316
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: September 9, 2014

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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 09/15/14 - 09/21/14 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 09/15/14 - 09/21/14 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-201404319
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 9, 2014

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Texas Education Agency

Correction of Error

The Texas Education Agency (TEA) adopted amendments, repeals and new sections in 19 TAC Chapter 100, Subchapter AA, Commissioner's Rules Concerning Open-Enrollment Charter Schools, in the September 12, 2014, issue of the *Texas Register* (39 TexReg 7295).

Due to error by the Texas Education Agency, the hyphenated word "non-profit" appeared in the text of §100.1001(14)(B) and (E) on page 7318. The word should be spelled "nonprofit" for consistency throughout the subchapter.

TRD-201404320

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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 20, 2014.** 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 20, 2014.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission 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: 701 SPEEDY CORPORATION dba ANB FOOD MART; DOCKET NUMBER: 2014-0754-PST-E; IDENTIFIER: RN101675759; LOCATION: Navasota, Grimes County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; PENALTY: $8,063; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Angelina County Water Control Improvement District 4; DOCKET NUMBER: 2013-0842-WQ-E; IDENTIFIER: RN102952223; LOCATION: Diboll, Angelina County; TYPE OF FACILITY: collection system; RULES VIOLATED: 30 TAC §217.63(b), by failing to ensure that the lift stations include an audiovisual alarm system; TWC, §26.039(b), by failing to timely notify the commission of a discharge 24 hours after becoming aware of the discharge; TWC, §26.121(a)(1), by failing to prevent the discharge of sewage from the collection system into and adjacent to any water in the state; PENALTY: $4,200; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: Athens Twin Ventures, Incorporated dba Twin Stop 4; DOCKET NUMBER: 2014-0820-PST-E; IDENTIFIER: RN101763852; LOCATION: Athens, Henderson 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 month; PENALTY: $8,250; ENFORCEMENT COORDINATOR: Allyson Plantz, (512) 239-4593; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: Cameron Road Enterprises, Incorporated dba Primos Food Mart; DOCKET NUMBER: 2014-0880-PST-E; IDENTIFIER: RN101494268; LOCATION: Austin, Travis 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 month; PENALTY: $2,438; ENFORCEMENT COORDINATOR: John Duncan, (512) 239-2720; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(5) COMPANY: City of Breckenridge; DOCKET NUMBER: 2014-0874-MWD-E; IDENTIFIER: RN102844917; LOCATION: Breckenridge, Stephens County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010040001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Gregory Zychowski, (512) 239-3158; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: City of Morgan's Point; DOCKET NUMBER: 2014-0718-MWD-E; IDENTIFIER: RN102075801; LOCATION: Morgan's Point, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010779001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $3,250; ENFORCEMENT COORDINATOR: Katelyn Samples, (512) 239-4728; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: City of Roscoe; DOCKET NUMBER: 2014-0821-PWS-E; IDENTIFIER: RN101430924; LOCATION: Roscoe, Nolan County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(s)(2)(C)(i), by failing to properly verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; and 30 TAC §290.46(e)(4)(B), by failing to employ an operator with a Class C or higher groundwater license at a groundwater system serving more than 250 connections, but no more than 1,000 connections; PENALTY: $300; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(8) COMPANY: El Paso Water Utilities Public Service Board; DOCKET NUMBER: 2014-0392-MLM-E; IDENTIFIER: RN103778882; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §305.42(a) and §290.42(i), and TWC, §26.121(a), by failing to obtain authorization from the commission prior to any discharge of wastewater; 30 TAC §290.42(e)(4)(A), by failing to provide a full-face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration standards for construction and operation that is readily accessible outside the chlorination room and provide a small bottle of fresh ammonia solution for testing for chlorine leakage that is readily accessible outside the chlorinator room and immediately available to the operator in the event of an emergency; and 30 TAC §290.46(f)(2) and (3)(E)(iv), by failing to make water works operation and maintenance records available for review by commission personnel during the investigation; PENALTY: $3,202; Supplemental Environmental Project offset amount of $2,562 applied to Trans-Pecos Water and Land Trust; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560 El Paso, Texas 79901-1206, (915) 834-4949.

(9) COMPANY: Ezequiel Romeo Perez dba RP Recycling; DOCKET NUMBER: 2014-0756-WQ-E; IDENTIFIER: RN106209141; LOCATION: Lyford, Willacy County; TYPE OF FACILITY: scrap and waste metal recycling; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activities under Texas Pollutant Discharge Elimination System Multi-Sector General Permit Number TXR050000; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(10) COMPANY: General Motors LLC; DOCKET NUMBER: 2012-1411-AIR-E; IDENTIFIER: RN102505963; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: automobile manufacturing plant; RULES VIOLATED: 30 TAC §122.110(a) and §122.217(a)(2), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O1151, Special Terms and Conditions Number (1)(F), by failing to submit a minor permit revision application for FOP Number O1151; and 30 TAC §122.145(2), THSC, §382.085(b), and FOP Number O1151, General Terms and Conditions, by failing to report all instances of deviations within 30 days after the end of the reporting period; PENALTY: $8,125; ENFORCEMENT COORDINATOR: Amancio Gutierrez, (512) 239-3921; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: GURUDWARA SAHIB OF HOUSTON INCORPORATED; DOCKET NUMBER: 2014-0888-PWS-E; IDENTIFIER: RN105978381; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to conduct coliform monitoring for the months of December 2010 and January 2011; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of each quarter; and 30 TAC §290.117(c)(2) and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director for the July 1st, 2012 - December 31, 2012, January 1, 2013 - June 30, 2013, and July 1st, 2013 - December 31, 2013 monitoring periods and failed to provide public notification and submit a copy of the public notification to the executive director regarding the failure to collect lead and copper samples for the July 1st, 2012 - December 31, 2012 monitoring period; PENALTY: $787; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Harmen Waterlander dba Linquenda Dairy; DOCKET NUMBER: 2014-0819-AGR-E; IDENTIFIER: RN102670114; LOCATION: Lingleville, Erath County; TYPE OF FACILITY: concentrated animal feeding operation; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §321.40(d), and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG920560, Part III.A.11.(b)(1), Land Application, by failing to prevent the unauthorized discharge of manure, litter, or wastewater from a land management unit; and 30 TAC §321.44(a) and TPDES General Permit Number TXG920560, Part IV.B.5., Reporting and Notifications, by failing to notify the TCEQ orally within 24 hours of a discharge and in writing within 14 working days of the discharge; 30 TAC §321.36(g)(1) and TPDES General Permit Number TXG920560, Part III.A.12.(a)(2), Sampling and Testing, by failing to collect and analyze soil samples prior to resuming land application of wastewater; PENALTY: $2,613; ENFORCEMENT COORDINATOR: Gregory Zychowski, (512) 239-3158; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Huntsman Petrochemical LLC; DOCKET NUMBER: 2014-0843-AIR-E; IDENTIFIER: RN100219252; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O2287, Special Terms and Conditions Number 9, and New Source Review Permit Number 5807A, Special Conditions Number 1, by failing to comply with the allowable volatile organic compounds emissions rate for E4 Unit Storage Tank, Emission Point Number E4TE436; and 30 TAC §122.143(4) and §122.145(2)(A), THSC, §382.085(b), and FOP Number O2287, General Terms and Conditions, by failing to report all instances of deviations; PENALTY: $13,600; Supplemental Environmental Project offset amount of $5,440 applied to Southeast Texas Regional Planning Commission; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: Monroe Center, Incorporated dba First Stop Food Store 16; DOCKET NUMBER: 2014-0922-PST-E; IDENTIFIER: RN101434603; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; PENALTY: $1,730; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Nancy Overall dba Overall Grocery; DOCKET NUMBER: 2014-0681-PST-E; IDENTIFIER: RN102277308; LOCATION: New Caney, Montgomery County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month and failed to provide release detection for the pressurized piping associated with the UST system; 30 TAC §334.48(a) and (b), by failing to ensure the UST system is operated, maintained, and managed in a manner that will prevent releases of regulated substances and in accordance with accepted industry practices; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days; 30 TAC §115.242(d)(3) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain all components of the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system; 30 TAC §115.242(d)(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system; 30 TAC §115.246(4) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for inspection upon request by agency personnel; and 30 TAC §115.245 and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever comes first; PENALTY: $29,355; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: NASHIA INVESTMENTS, INCORPORATED dba Leopard Food Mart; DOCKET NUMBER: 2014-0795-PST-E; IDENTIFIER: RN101724136; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(17) COMPANY: NEW HORIZONS RANCH AND CENTER, INCORPORATED; DOCKET NUMBER: 2014-0916-PWS-E; IDENTIFIER: RN101278471; LOCATION: Goldthwaite, Mills County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §§290.110(e)(2) and (5), 290.111(h)(2) and (12), and 290.122(c)(2)(A) and (f), by failing to submit a Surface Water Monthly Operating Report (SWMOR) with the required turbidity and disinfectant residual data to the executive director by the tenth day of the month following the end of the reporting period and failed to provide public notification and submit a copy of the public notification to the executive director regarding the failure to submit SWMORs; PENALTY: $270; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(18) COMPANY: Osburn Contractors, Incorporated (Osburn Contractors Plant Number 3 Fort Worth); DOCKET NUMBER: 2014-0869-AIR-E; IDENTIFIER: RN101960110 and RN107124950; LOCATION: Fort Worth, Dallas and Tarrant County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain proper authorization for a concrete batch plant; PENALTY: $4,125; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Rentech Nitrogen Pasadena, LLC; DOCKET NUMBER: 2014-0839-IWD-E; IDENTIFIER: RN101621944; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: terminal facility and fertilizer plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0000649000, Effluent Limitations and Monitoring Requirements Number 1, Outfall Numbers 001, 002, and 003, by failing to comply with permitted effluent limits; PENALTY: $37,500; ENFORCEMENT COORDINATOR: Alan Barraza, (512) 239-4642; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: STX Process Equipment LLC; DOCKET NUMBER: 2014-0907-PWS-E; IDENTIFIER: RN105830186; LOCATION: Freer, Duval County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing a well into service as a public water system; 30 TAC §290.43(c)(4), by failing to provide the facility's two storage tanks with a liquid level indicator located at the tank site; and 30 TAC §290.43(c)(3), by failing to provide an overflow on the facility's two storage tanks designed in strict accordance with the current American Water Works Association standards that terminates with a gravity-hinged and weighted cover and fits tightly with no gap over 1/16 inch; PENALTY: $354; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(21) COMPANY: Yes Companies, LLC; DOCKET NUMBER: 2014-0998-WQ-E; IDENTIFIER: RN107191165; LOCATION:

Wylie, Collin County; TYPE OF FACILITY: mobile home community; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater into or adjacent to water in the state; PENALTY: $4,875; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201404317
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 9, 2014

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Enforcement Orders

An agreed order was entered regarding City of Sugar Land, Docket No. 2013-1648-PST-E on August 18, 2014 assessing $2,438 in administrative penalties with $487 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alishan Enterprises, Inc. dba Z & M Food Mart & Deli, Docket No. 2013-1801-PST-E on August 18, 2014 assessing $1,625 in administrative penalties with $325 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding C&R DISTRIBUTING, LLC, Docket No. 2013-2045-PST-E on August 18, 2014 assessing $3,855 in administrative penalties with $771 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Denver City, Docket No. 2013-2176-PWS-E on August 18, 2014 assessing $6,174 in administrative penalties with $1,234 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BROWN SEPTIC TANK SERVICE, INC., Docket No. 2013-2216-SLG-E on August 18, 2014 assessing $6,237 in administrative penalties with $1,247 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Howard C. Bigham dba Key Mobile Home Park, Docket No. 2013-2230-PWS-E on August 18, 2014 assessing $3,246 in administrative penalties with $649 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Paducah, Docket No. 2014-0027-PWS-E on August 18, 2014 assessing $2,907 in administrative penalties with $580 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Domino, Docket No. 2014-0156-PWS-E on August 18, 2014 assessing $163 in administrative penalties with $32 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TXI Operations, LP, Docket No. 2014-0176-IWD-E on August 18, 2014 assessing $5,619 in administrative penalties with $1,123 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hidalgo County, Docket No. 2014-0248-MWD-E on August 18, 2014 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Katleyn Samples, Enforcement Coordinator at (512) 239-4728, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Deaf Smith County Fresh Water Supply District 1, Docket No. 2014-0270-PWS-E on August 18, 2014 assessing $706 in administrative penalties with $141 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John Thomas Jones dba Pine Oaks Oasis, Docket No. 2014-0276-PWS-E on August 18, 2014 assessing $2,976 in administrative penalties with $595 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Bellevue, Docket No. 2014-0282-MWD-E on August 18, 2014 assessing $5,775 in administrative penalties with $1,155 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John Alihemati dba Station 66, Docket No. 2014-0302-AIR-E on August 18, 2014 assessing $1,750 in administrative penalties with $350 deferred.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BASF TOTAL Petrochemicals LLC, Docket No. 2014-0303-AIR-E on August 18, 2014 assessing $6,563 in administrative penalties with $1,312 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Needville Independent School District, Docket No. 2014-0312-PWS-E on August 18, 2014 assessing $100 in administrative penalties with $20 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RAINBOW CAMP, LLC dba Up the River Camp, Docket No. 2014-0314-PWS-E on August 18, 2014 assessing $620 in administrative penalties with $124 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding St. Paul Water Supply Corporation, Docket No. 2014-0317-MWD-E on August 18, 2014 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GE Packaged Power, Inc., Docket No. 2014-0393-AIR-E on August 18, 2014 assessing $2,438 in administrative penalties with $487 deferred.

Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (210) 403-4063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pafford Properties, LLC, Docket No. 2014-0397-PWS-E on August 18, 2014 assessing $684 in administrative penalties with $136 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ted R. Chapman, Docket No. 2014-0414-WR-E on August 18, 2014 assessing $250 in administrative penalties with $50 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding La Salle Water Control and Improvement District 1, Docket No. 2014-0425-PWS-E on August 18, 2014 assessing $151 in administrative penalties with $30 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WESTFIELD MOBILE HOME COMMUNITY, LTD., Docket No. 2014-0428-PWS-E on August 18, 2014 assessing $224 in administrative penalties with $224 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Shiner, Docket No. 2014-0450-MWD-E on August 18, 2014 assessing $1,750 in administrative penalties with $350 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ismael Arreola dba Arreola's Bodyshop 2, Docket No. 2014-0452-AIR-E on August 18, 2014 assessing $1,125 in administrative penalties with $225 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Smith Industries, Inc., Docket No. 2014-0460-AIR-E on August 18, 2014 assessing $1,125 in administrative penalties with $225 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding South Hampton Resources, Inc., Docket No. 2014-0466-AIR-E on August 18, 2014 assessing $4,463 in administrative penalties with $892 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Smart Shop, Inc. dba Step-N-Save Conoco, Docket No. 2014-0480-PST-E on August 18, 2014 assessing $1,347 in administrative penalties with $269 deferred.

Information concerning any aspect of this order may be obtained by contacting John Duncan, Enforcement Coordinator at (512) 239-2720, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VirTex Operating Company, Inc., Docket No. 2014-0485-AIR-E on August 18, 2014 assessing $1,250 in administrative penalties with $250 deferred.

Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Billy Van Nguyen dba Super Food Mart, Docket No. 2014-0507-PST-E on August 18, 2014 assessing $2,276 in administrative penalties with $455 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gary C. Aardal, Docket No. 2014-0542-PWS-E on August 18, 2014 assessing $100 in administrative penalties with $20 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Crockett County Mining, L.L.C., Docket No. 2014-0550-AIR-E on August 18, 2014 assessing $813 in administrative penalties with $162 deferred.

Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Plains Exploration & Production Company, Docket No. 2014-0613-AIR-E on August 18, 2014 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Gene E. Oakley, Docket No. 2014-0723-WOC-E on August 18, 2014 assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pasadena Refining System, Inc, Docket No. 2014-0763-AIR-E on August 18, 2014 assessing $7,087 in administrative penalties with $1,417 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201404348
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 10, 2014

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Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application Number 40278

Application. City of Crockett, 200 N. 5th Street, Crockett, Texas 75835, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration 40278, to construct and operate a Type V municipal solid waste transfer facility. The proposed facility, City of Crockett Solid Waste Transfer Facility, will be located at 400 W Durrett, Crockett, Texas 75835, 0.75 miles east of the intersection of FM 229 and Loop 304 on Navarro Road (FM 229), in Houston County. The Applicant is requesting authorization to store and process all municipal solid waste including commercial waste. The registration application is available for viewing and copying at the City Hall, City of Crockett, 200 N. 5th St, Crockett, Texas 75835 and may be viewed online at http://crocketttexas.org/FinalPermitPackage.pdf. 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: http://crocketttexas.org/TransferStationLocationMap.pdf. 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. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk mail code MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically submitted to http://www14.tceq.texas.gov/epic/eComment/. If you choose to communicate with the TCEQ electronically, please be aware that your e-mail address, like your physical mailing address, will become part of the agency's public record. For information about this application or the registration process, individual members of the general public may call the TCEQ Public Education Program at 1 (800) 687-4040. General information regarding the TCEQ can be found at our web site at http://www.tceq.texas.gov/. Further information may also be obtained from the City of Crockett at the address stated above or by calling Mr. Raymond Fleming, City of Crockett Solid Waste Director, at (936) 544-4025.

TRD-201404347
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 10, 2014

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Notice of Costs to Administer the Voluntary Cleanup Program and the Innocent Owner/Operator Program

In accordance with the Solid Waste Disposal Act, Texas Health and Safety Code (THSC), §361.613, the executive director of the Texas Commission on Environmental Quality (TCEQ or commission) annually shall calculate the commission's costs to administer the Voluntary Cleanup Program (VCP) and the Innocent Owner/Operator Program

(IOP), 30 TAC §333.43, and shall publish in the *Texas Register* the rates established for the purposes of identifying the costs recoverable by the commission. The TCEQ has calculated and is publishing the bill rate for both the VCP and the IOP as $107 per hour for the commission's Fiscal Year 2015.

The VCP and the IOP are implemented by the same TCEQ staff. Therefore, a single hourly bill rate for both programs is appropriate. The hourly bill rate is determined based upon current projections for staff salaries for the Fiscal Year 2015, including the fringe benefit rate and the indirect cost rate, minus anticipated federal funding that the commission will receive, and then divided by the estimated number of staff hours necessary to complete the program tasks. Fringe benefits include retirement, social security, and insurance expenses and are calculated at a set rate for the entire agency. The current fringe benefit rate is 25.90% of the budgeted salaries. Indirect costs include allowable overhead expenses and also are calculated at a set rate for the entire agency. The current indirect cost rate is 29.25% of the budgeted salary. The release time hours include, for example, sick leave, holidays, military duty, and jury duty, and are set at 21.13%. The hourly bill rate was calculated and then rounded to the nearest whole dollar amount. The commission will use an hourly bill rate of $107 for both the VCP and the IOP for the Fiscal Year 2015. All travel-related expenses will be billed separately. After an applicant's initial $1,000 application fee has been depleted for the VCP or the IOP review and oversight costs, invoices will be sent monthly to the applicant, or designee, for payment of additional program expenses.

The commission anticipates receiving federal funding during Fiscal Year 2015 for the continued development and enhancement of the VCP and the IOP. If the federal funding anticipated for Fiscal Year 2015 does not become available, the commission may calculate and publish a new hourly bill rate. Federal funding of the VCP and the IOP should occur prior to October 1, 2014.

For more information, please contact Ms. Anna Brulloths, VCP-CA Section, Remediation Division, Texas Commission on Environmental Quality, MC 221, 12100 Park 35 Circle, Austin, Texas 78753 or call (512) 239-5052 or email: *anna.r.brulloths@tceq.texas.gov.*

TRD-201404315
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 9, 2014

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Notice of Water Quality Applications

The following notices were issued on August 29, 2014 through September 5, 2014.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing 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 DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

CITY OF AUSTIN, which operates Decker Creek Power Plant, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0001887000, which authorizes once through cooling water and previously monitored effluents (low volume waste, metal cleaning waste, and stormwater) at a daily average flow not to exceed 725,000,000 gallons per day via Outfall 001 and stormwater runoff on an intermittent and flow-variable basis via Outfall 002. The facility is located at 8003 Decker Lane, on the west shore of Walter E. Long Lake, approximately four miles east of the intersection of U.S. Highway 290 and U.S. Highway 183, in the City of Austin, Travis County, Texas 78724.

JM HUBER CORPORATION which operates a limestone mine and processing plant, has applied for a renewal of TPDES Permit No. WQ0004922000, which authorizes the discharge of mine dewatering wastewater at a daily average flow not to exceed 25,000 gallons per day via Outfall 001. This facility is located at 849 South Highway 281, Burnet County, Texas 78654.

CITY OF FALLS CITY has applied for a new TCEQ Permit No. WQ0005127000 to authorize the land application of sewage sludge for beneficial use on 9.13 acres. This permit will not authorize a discharge of pollutants into water in the State. The sewage sludge land application site will be located approximately 600 feet northwest of the intersection of Panna Maria Street and Maverick Street in the City of Falls City, Karnes County, Texas 78113.

CITY OF LAKE JACKSON has applied for a renewal of TPDES Permit No. WQ0010047001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,850,000 gallons per day. The facility is located at 151 Canna Lane, approximately 0.9 mile southwest of the intersection of Oak Drive and State Highway 332 in Brazoria County, Texas 77566.

CITY OF WHITEWRIGHT has applied for a renewal of TPDES Permit No. WQ0010644001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 627,000 gallons per day. The facility is located at 810 1/2 North Bond Street, Whitewright, in Grayson County, Texas 75491.

San Antonio River Authority has applied for a renewal of TPDES Permit No. WQ0010749001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 7,330,000 gallons per day. The facility is located at 9638 Schaefer Road, Converse in Bexar County, Texas 78109.

BRAZORIA COUNTY FRESH WATER SUPPLY DISTRICT NO 1 has applied for a renewal of TPDES Permit No. WQ0011130001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 140,000 gallons per day. The facility is located on the east side of State Highway 36, approximately 1,100 feet southeast of the intersection of Farm-to-Market Road 1462 and State Highway 36, northeast of the City of Damon in Brazoria County, Texas 77430.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 180 has applied for a renewal of TPDES Permit No. WQ0012127001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located at 5042 Innsbruk Drive, approximately 1/2 mile east of the intersection of Kleinsbrook Road and Bammel-North Houston Road in Harris County, Texas 77066.

BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT NO 3 has applied for a renewal of TPDES Permit No. WQ0012332001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,400,000 gallons per day. The facility is located 0.1 mile east of the Magnolia Street and Cullen Parkway intersection, accessible on Magnolia Street, Pearland, in Brazoria County, Texas 77584.

RITA LAURA REDOW KARBALAI has applied for a renewal of TPDES Permit No. WQ0012399001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located at 12117 Aldine Westfield Road, Houston, 4,000 feet south of the intersection of Aldine

Westfield Road and Aldine Mail Road; 3.5 miles east of the intersection of Interstate Highway 45 and Farm-to-Market Road 149 in Harris County, Texas 77093.

CITY OF MISSOURI CITY has applied for a renewal of TPDES Permit No. WQ0012701001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located approximately 500 feet west and 1,000 feet north of the intersection of Trammel-Fresno Road and the Fort Bend Parkway Toll Road in Fort Bend County, Texas 77459.

DRIPPING SPRINGS INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TCEQ Permit No. WQ0013748002, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day (GPD) from Plant "A", and 9,000 gallons per day (GPD) from Plant "B". The combined flow for disposal from Wastewater Treatment Plants "A" and "B" shall not exceed 25,000 gallons per day via public access subsurface drip irrigation with a minimum area of 166,835 square feet. The wastewater treatment facility and disposal site are located approximately 3,800 feet north and 8,800 feet west of the intersection of State Highway 12 and U.S. Highway 290, in Hays County, Texas 78620. The wastewater treatment facility and disposal site are located in the drainage basin of Onion Creek in Segment No. 1427 of the Colorado River Basin. This permit will not authorize a discharge of pollutants into waters in the State.

TRAVIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 17 has applied for a renewal of TCEQ Permit No. WQ0013953001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 45,873 gallons per day via subsurface drip irrigation system on 10.531 acres of public access land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 14610 and 14610 1/2 Mansfield Dam Court, north of Farm-to-Market Road 620, approximately 0.4 mile north-northwest of Mansfield Dam in Travis County, Texas 78734.

SOUTHERN UTILITIES COMPANY has applied for a renewal of TPDES Permit No. WQ0014079001, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 14,400 gallons per day. The facility is located at 2195 Farm-to-Market Road 346 North, Bullard, approximately 2.8 miles south of the intersection of Farm-to-Market Road 346 and Farm-to-Market Road 344 in Cherokee County, Texas 75757.

TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO 10 has applied for a renewal of TCEQ Permit No. WQ0014335001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 86,400 gallons per day via non-public access subsurface drip irrigation system with a minimum area of 873,200 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 620 Lohman Ford Road, Lago Vista, approximately 1,100 feet north-northwest of the intersection of Lohman Ford Road and Ivean Pearson Road, about 4.5 miles south of Lago Vista in Travis County, Texas 78645.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 402 has applied for a renewal of TPDES Permit No. WQ0014625001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located approximately 350 feet west of Lockwood Road and approximately 3,850 feet south of the intersection of Sam Houston Tollway and Lockwood Road in Harris County, Texas 77044.

AUC GROUP LP has applied for a renewal of TPDES Permit No. WQ0014724002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 995,000 gallons per day. The facility will be located approximately 1,700 feet north-northwest of the intersection of Hanselman Road and County Road 67, on the west side of Chocolate Bayou in Brazoria County, Texas 77583.

AQUA WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0014833001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility will be located approximately 1.25 miles north of the intersection of Old 71 and Highway 71 in Bastrop County, Texas 78602.

SABINE RIVER AUTHORITY OF TEXAS has applied for a new permit, TPDES Permit No. WQ0015223001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 8,235 gallons per day. The facility is located approximately 1.43 miles northeast of the intersection of Farm-to-Market Road 3121 and State Highway 21, in Sabine County, Texas 75948.

NJM PROPERTY LTD has applied for a new permit, TPDES Permit No. WQ0015246001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility will be located at 29607 Robinson Road, in Montgomery County, Texas 77385.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, toll-free, at 1 (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 1 (800) 687-4040.

TRD-201404346
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 10, 2014

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 30, 2014 through September 2, 2014. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, September 5, 2014. The public comment period for this project will close at 5:00 p.m. on Monday, October 6, 2014.

FEDERAL AGENCY ACTIONS:

Applicant: Canal City Property Owners Association; Location: The project site is located within existing artificial canals, along the Gulf Intracoastal Waterway (GIWW), at Canal City Subdivision, in Gilchrist, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: HIGH ISLAND, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 29.52982 North; Longitude: 94.47212 West.

Project Description: The applicant proposes to remove 2,000 cubic yards of dredged material from three existing canals, authorized under Department of the Army (DA) Permit 16747. The dredged material will be hauled offsite to an upland dredge material placement area (DMPA) or placed on lots previously authorized by Amendment 1 and discussed in the Background Section. The applicant also proposes to place 1,205 linear feet of riprap along the shoreline of the GIWW to prevent further erosion.

CMP Project No: 14-1943-F1.

Type of Application: U.S.A.C.E. permit application #SWG-2014-00315. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Mr. Ray Newby, P.O. Box 12873, Austin, Texas 78711-2873 or via email at federal.consistency@glo.texas.gov. Comments should be sent to Mr. Newby at the above address or by email.

TRD-201404355
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: September 10, 2014

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare and Medicaid Services (CMS) a request for an amendment of the Texas Healthcare Transformation Quality Improvement Program (THTQIP) waiver, under the authority of §1115 of the Social Security Act. The THTQIP waiver allows the State to expand managed care throughout the state, while preserving an important revenue source for certain qualifying hospitals that currently receive Upper Payment Limit payments. CMS has approved this waiver through September 30, 2016.

The proposed effective date for the amendment to the waiver is March 1, 2015, with no changes to budget neutrality.

This amendment request proposes to amend the THTQIP waiver as a result of changes in the state plan. Specifically, HHSC is proposing to implement the Community First Choice (CFC) program as an amendment to the Medicaid State Plan under section 1915(k) of the Social Security Act. CFC services would be provided to individuals who have a physical or intellectual disability, who meet categorical coverage requirements for Medicaid or meet financial eligibility for home and community-based services, and who meet an institutional level of care. The benefits included in CFC are personal assistance services, habilitation, emergency response services, and support consultation.

HHSC is amending the THTQIP waiver to reflect that CFC services will be provided to STAR+PLUS members eligible for CFC services through the STAR+PLUS managed care organizations (MCOs). However, members enrolled in STAR+PLUS for acute care only who are also enrolled in Community Living Assistance and Support Services, Texas Home Living, Deaf Blind Multiple Disabilities, or Home and Community-based Services 1915(c) waivers will receive CFC services coordinated through the Department of Aging and Disability Services, rather than the STAR+PLUS MCOs.

To obtain copies of the proposed waiver amendment, interested parties may contact Tiffany Kirts by mail at Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711-3247, phone (512) 424-6574, fax (512) 730-7472, or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201404351
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: September 10, 2014

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Texas Department of Housing and Community Affairs

2014-1 HOME Multifamily Development Program Notice of Funding Availability

I. Source of HOME Funds.

The HOME Investment Partnerships (HOME) program was established by the Cranston-Gonzalez National Affordable Housing Act of 1990 to expand the supply of decent, affordable housing for low-income households. The Department of Housing and Urban Development (HUD) provides grants to states and local governments, who in turn fund housing programs that meet local needs and priorities.

II. Notice of Funding Availability (NOFA).

The Texas Department of Housing and Community Affairs (Department) announces the availability of $16,800,000 in funding for the HOME Multifamily Development Program. Of that amount, $2,000,000 will be set aside for applications layered with Noncompetitive (4%) Housing Tax Credits; the remaining funds will be available for applications layered with Competitive (9%) Housing Tax Credits and applications not requesting any Housing Tax Credits. All $16,800,000 will be available under two set-asides: $9,500,000 under the General set-aside and $7,300,000 under the Community Housing Development Organization (CHDO) set-aside.

The HOME Multifamily Development 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.

Starting on **September 19, 2014,** the Department will accept applications on a first-come, first-served basis.

III. Application Deadline and Availability.

The application acceptance period will end on December 1, 2014. The 2014-1 HOME Multifamily Development Program 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 NOFA is posted.

Questions regarding the HOME Multifamily Development Program NOFA may be addressed to Eric Weiner at (512) 475-3343 or eric.weiner@tdhca.state.tx.us.

TRD-201404312
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 8, 2014

♦ ♦ ♦

Notice of Public Comment Period and Public Hearings on the Draft 2015-2019 State of Texas Consolidated Plan

The State of Texas will hold a 32-day public comment period from Friday, September 12, 2014 through 6:00 p.m. Central on Monday, October 13, 2014, to obtain public comment on the *Draft 2015-2019 State of Texas Consolidated Plan* (Plan).

The Plan is a document, required by the U.S. Department of Housing and Urban Development (HUD), that governs funds for the next five years received by the State of Texas from HUD for four programs: the Emergency Solutions Grants (ESG) Program and the HOME Investment Partnerships Program (HOME) administered by the Texas Department of Housing and Community Affairs (TDHCA); the Community Development Block Grant (CDBG) Program operated by the Texas Department Agriculture (TDA); and the Housing Opportunities for Persons with AIDS (HOPWA) Program operated by the Department of State Health Services (DSHS).

The Plan is available on the TDHCA website at http://www.tdhca.state.tx.us/housing-center/consolidated-plan-2015-2019.htm. A hard copy of the Plan can be requested by contacting the Housing Resource Center at PO Box 13941, Austin, Texas 78711-3941 or by calling (512) 475-3976.

During the public comment period, four (4) public hearing will take place as follows:

Tuesday, September 30, 2014

6:00 p.m.

Omni San Antonio Hotel, Grand Ballroom C

9821 Colonnade Boulevard

San Antonio, Texas 78230

Thursday, October 2, 2014

11:00 a.m.

Harlingen Public Library, Boggus Conference Room

410 76 Drive

Harlingen, Texas 78550

Monday, October 6, 2014

5:00 p.m.

Stephen F. Austin Building, Room 170

1700 N. Congress Avenue

Austin, Texas 78701

Wednesday, October 8, 2014

12:30 p.m.

Fort Worth Central Library, Chappell Meeting Room

500 West Third Street

Fort Worth, Texas 76102-7305

Anyone may submit comments on the Plan in written form or oral testimony at the public hearings. Written comments concerning the Plan may be submitted by mail to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941, by email to info@tdhca.state.tx.us, or by fax to (512) 475-0070. Comments must be received no later than Monday, October 13, 2014, 6:00 p.m. Central Time.

Individuals who require auxiliary aids or services for the public hearings should contact Ms. Gina Esteves, ADA responsible employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least three (3) days before the hearings so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for the public hearings should contact Jorge Reyes by phone at (512) 475-4577 or by email at jorge.reyes@tdhca.state.tx.us at least three (3) days before the hearings so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 o enviarle un correo electrónico a jorge.reyes@tdhca.state.tx.us por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-201404289
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 8, 2014

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Texas Department of Insurance

Company Licensing

Application to change the name of UNITED SECURITY INSURANCE COMPANY to PREVISOR INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Denver, Colorado.

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 Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201404349
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: September 10, 2014

♦ ♦ ♦

Public Notice

Notice of Application by a Small Employer Carrier to be a Risk-Assuming Carrier

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Insurance Code Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

All Savers Insurance Company

The application is available for public inspection at the Texas Department of Insurance, Legal Services, Office of Policy Development Counsel. To inspect the application, contact Justin Wayne Beam, Staff Attorney, William P. Hobby Building, 333 Guadalupe, Tower I, Room 940F2, Austin, Texas.

If you wish to comment on the application from All Savers Insurance Company to be a risk-assuming carrier, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. On consideration of the application, if the commissioner is satisfied that all requirements of law have been met, the commissioner or her designee may take action to approve All Savers Insurance Company's application to be a risk-assuming carrier.

TRD-201404321
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: September 9, 2014

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Texas Low-Level Radioactive Waste Disposal Compact Commission

Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

RAM Services, Inc. (TLLRWDCC #1-0077-00)

510 County Highway V

Two Rivers, Wisconsin 54241

The application will be placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by September 29, 2014. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attn: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, Texas 78701

Comments may also be submitted via email to: administration@tllrwdcc.org.

TRD-201404223
Audrey Ferrell
Administrator
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: September 4, 2014

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 2, 2014, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of SmartEdgeNet, LLC for a Service Provider Certificate of Operating Authority, Docket Number 42868.

Applicant intends to provide resale-only telecommunications services.

Applicant seeks to provide service comprising the exchanges currently being served by Southwestern Bell Telephone Company d/b/a AT&T Texas and GTE Southwest, Inc. d/b/a Verizon Southwest throughout the State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than September 26, 2014. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42868.

TRD-201404271
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 8, 2014

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Notice of Application for Formal Approval of Method of Allocation Pursuant to P.U.C. Substantive Rule §25.141(e)(1)(C)

Notice is given to the public of an application filed on September 8, 2014 with the Public Utility Commission of Texas, for formal approval of method of allocation pursuant to P.U.C. Substantive Rule §25.141(e)(1)(C).

Docket Title and Number: Petition of Minol USA for Formal Approval of Method of Allocation Pursuant to P.U.C. Subst. R. §25.141(e)(1)(C); Docket Number 42743.

Application: Minol, Inc. filed an application, in accordance with P.U.C. Substantive Rule §25.141(e)(1)(C), for approval of a method to bill HVAC electric charges to residential tenants served with high efficiency Variable Refrigerant Volume/Variable Refrigerant Flow (VRV/VRF) HVAC systems using allocation data computed by VRV/VRF Proportional Distribution software.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than October 3, 2014. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42743.

TRD-201404326
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 9, 2014

♦ ♦ ♦

Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 4, 2014, for retail

electric provider (REP) certification, pursuant to Public Utility Regulatory Act (PURA) §39.352.

Docket Title and Number: Application of Volt Electricity Provider, LP for Retail Electric Provider Certification, Docket Number 42906.

Applicant's requested service area by geography includes the Electric Reliability Council of Texas (ERCOT) area.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than October 20, 2014. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All comments should reference Docket Number 42906.

TRD-201404324
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 9, 2014

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas on September 5, 2014, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §39.158 (Vernon 2007 and Supp. 2013) (PURA).

Docket Style and Number: Application of San Antonio River Authority and W&W Water, Inc. for the Sale, Transfer, or Merger of Facilities and Certificate Rights in Wilson County, Docket Number 42914.

The Application: San Antonio River Authority (SARA) and W&W Water, Inc. (W&W) filed an application for approval of the proposed purchase of the Creekwood Estates and Seven Oaks Subdivision Water System by W&W from SARA. W&W will assume control of all system components and distribution system for the Creekwood Estates and Seven Oaks Subdivision Water Systems.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 42914.

TRD-201404325
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 9, 2014

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Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on September 2, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of North Texas Telephone Company for Approval of a Minor Rate Change Pursuant to P.U.C. Subst. R. §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 42874.

The Application: North Texas Telephone Company (NTTC) filed an application with the commission for revisions to its Local Exchange Tariff. NTTC proposed an effective date of December 1, 2014. The estimated revenue increase to be recognized by the Applicant is $9,168 in gross annual intrastate revenues. The Applicant has 449 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by September 29, 2014, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by September 29, 2014. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1 (800) 735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 42874.

TRD-201404230
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 4, 2014

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Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on September 2, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Totelcom Communication for Approval of a Minor Rate Change Pursuant to P.U.C. Subst. R. §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 42875.

The Application: Totelcom Communications (Totelcom) filed an application with the commission for revisions to its Local Exchange Tariff. Totelcom proposed an effective date of December 1, 2014. The estimated revenue increase to be recognized by the Applicant is $64,152 in gross annual intrastate revenues. The Applicant has 3,387 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by September 29, 2014, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by September 29, 2014. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1 (800) 735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact

the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 42875.

TRD-201404231
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 4, 2014

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Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on September 2, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Lipan Telephone Company for Approval of a Minor Rate Change Pursuant to P.U.C. Subst. R. §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 42876.

The Application: Lipan Telephone Company (Lipan) filed an application with the commission for revisions to its Local Exchange Tariff. Lipan proposed an effective date of December 1, 2014. The estimated revenue increase to be recognized by the Applicant is $28,096 in gross annual intrastate revenues. The Applicant has 1,277 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by September 24, 2014, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by September 24, 2014. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1 (800) 735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 42876.

TRD-201404232
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 4, 2014

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Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on September 2, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of West Plains Telecommunications, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Subst. R. §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 42873.

The Application: West Plains Telecommunications, Inc. (West Plains) filed an application with the commission for revisions to its Local Exchange Tariff. West Plains proposed an effective date of December 1, 2014. The estimated revenue increase to be recognized by the Applicant is $48,298 in gross annual intrastate revenues. The Applicant has 3,401 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by September 29, 2014, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by September 29, 2014. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1 (800) 735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 42873.

TRD-201404236
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 4, 2014

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Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on September 2, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of XIT Rural Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Subst. R. §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 42877.

The Application: XIT Rural Telephone Cooperative, Inc. (XIT Rural) filed an application with the commission for revisions to its Local Exchange Tariff. XIT Rural proposed an effective date of December 1, 2014. The estimated revenue increase to be recognized by the Applicant is $21,926.40 in gross annual intrastate revenues. The Applicant has 1,037 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by September 24, 2014, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by September 24, 2014. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1 (800) 735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 42877.

TRD-201404237

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 4, 2014

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Notice of Petition for Amendment to Sewer Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on September 4, 2014, of a petition under Texas Water Code Ann. §13.254(a-5) by Tyler Oak Creek Development, LLC to amend Tall Timbers Utility Company, Inc.'s sewer certificate of convenience and necessity by expedited release in Smith County, Texas.

Docket Style and Number: Petition of Tyler Oak Creek Development, LLC to Amend Tall Timbers Utility Company, Inc.'s Sewer Certificate of Convenience and Necessity by Expedited Release in Smith County, Docket No. 42893.

The Application: Tyler Oak Creek Development, LLC (Tyler Oak) owns a tract of land located wholly or partially within Tall Timbers Utility Company, Inc.'s (Tall Timbers) service area in Smith County, Texas. The tract of land is at least 25 acres. Tyler Oak petitioned the Public Utility Commission of Texas under Tex. Water Code Ann. §13.254(a-5) for expedited release of this property from Tall Timbers' sewer certificate of convenience and necessity (CCN) No. 20694. Tyler Oak states that this property is not receiving sewer service from Tall Timbers, nor does Tall Timbers have any sewer lines or facilities on the tract that could be used to provide retail sewer service.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than September 24, 2014, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42893.

TRD-201404350
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 10, 2014

♦ ♦ ♦

Notice of Petition for Amendment to Water Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on August 4, 2014, of a petition under Texas Water Code Ann. §13.254(a-5) by Martin Land Development, Ltd. to amend the Town of Cut and Shoot's water certificate of convenience and necessity (CCN) No. 11615 by expedited release in Montgomery County, Texas.

Docket Style and Number: Petition for Expedited Release Pursuant to Texas Water Code §13.254(a-5) from Martin Land Development, Ltd., to Decertify a Portion of Certificate of Convenience and Necessity (CCN) No. 11615 held by the Town of Cut and Shoot in Montgomery County, Docket No. 42894.

The Application: Martin Land Development, Ltd. (Martin) owns 133.965 acres in Montgomery County, Texas. Martin petitioned the Commission under Tex. Water Code Ann. §13.254(a-5) for expedited release of this property from the Town of Cut and Shoot's (Cut and Shoot) water certificate of convenience and necessity, No. 11615. Martin states that this property is not platted, has never been served, and does not have any utility infrastructure located on it.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than September 25, 2014, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42894.

TRD-201404352
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 10, 2014

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Notice of Petition for Amendment to Water and Sewer Certificates of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on September 4, 2014, of a petition under Texas Water Code Annotated §13.254(a-5) by Parker Corporation to amend Mustang Special Utility District's water and sewer certificates of convenience and necessity by expedited release in Denton County, Texas.

Docket Style and Number: Petition of Parker Corporation to Amend Mustang Special Utility District's Water and Sewer Certificates of Convenience and Necessity by Expedited Release in Denton, County, Docket No. 42895.

The Application: Parker Corporation (Parker) owns 97.68 acres in Denton County, Texas. Parker petitioned the commission under Texas Water Code Annotated §13.254(a-5) for expedited release of this property from Mustang Special Utility District's (Mustang) water and sewer certificates of convenience and necessity, No. 11856 and No. 20930, respectively. Parker states that this property is not receiving service from Mustang but instead is receiving service from the City of Lincoln Park.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than September 23, 2014, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42895.

TRD-201404322
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 9, 2014

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Public Notice of Forms Publication and Request for Comments

Staff of the Public Utility Commission of Texas (commission staff) request comments on its proposed forms and instructions which will be utilized in conjunction with existing substantive rules in Chapters 25, 26 and 28, relating to Electric, Telecommunications and Cable & Video Services. The commission is requesting comments concerning the minor changes in content and new format of the existing Aggregator

(AGG) Application, SPCOA and COA (CLEC) Application, Cable and Video (SICFA) Application, Interexchange Carrier (IXC) Registration Application and Texas Pay Telephone Service Provider (PTS) Registration Application. Staff seeks to make minor changes for consistency between commission forms, conversion to online format, clarification of information, reorganization of information and additional contacts. Pursuant to P.U.C. Procedural Rule §22.80 (relating to Commission Prescribed Forms), staff is seeking commission approval of these form changes.

The forms are available for viewing on the commission's filing interchange system at http://interchange.puc.texas.gov/WebApp/Interchange/application/dbapps/filings/pgSearch.asp. Comments on the proposed form revisions and form format revisions may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Sixteen copies of comments on the forms are required to be filed. Comments on the forms are due Monday, October 27, 2014. Comments should be organized in a manner consistent with the organizations of the forms. All comments should refer to Project Number 42764 and include the name of the specific form document.

Questions concerning Project Number 42764 should be directed to Gordon Van Sickle at (512) 936-7343. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

1. Aggregator (AGG) Registration Application - Online formatting, instructions integrated into application, reorganized requested information into sections to be consistent with other commission applications, information clarifications, Texas address contact, authorized representative contact, and regulatory representative contact.

2. Interexchange Carrier (IXC), Prepaid Calling Service Company or Other Uncertificated Nondominant Telecommunications Carrier Registration Application - Online formatting and reorganized requested information into sections to be consistent with other commission applications.

3. Texas Pay Telephone Service (PTS) Provider Registration Application - Online formatting, reorganized requested information into sections to be consistent with other commission applications, authorized contact, and regulatory contact.

4. State Issued Certificate of Franchise Authority (SICFA) Application - Online formatting, reorganized requested information into sections to be consistent with other commission applications and clarification of requested information.

5. Service Provider Certificate of Operating Authority (SPCOA) and Certificate of Operating Authority (COA) Certification Application - Online formatting and reorganized requested information into sections to be consistent with other commission applications.

TRD-201404270
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 8, 2014

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Public Notice of Workshop

Staff of the Public Utility Commission of Texas (commission staff) will hold a workshop regarding Project No. 42647, *ERCOT Planning and System Costs Associated with Renewable Resources and New Large DC Ties,* on Thursday, October 30, 2014, at 9:30 a.m. The workshop will be held in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

Questions concerning the workshop or this notice should be referred to Liz Kayser, Section Director, Competitive Markets Division, (512) 936-7390 or at liz.kayser@puc.texas.gov. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201404313
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 8, 2014

♦ ♦ ♦

Public Notice of Workshop

Staff of the Public Utility Commission of Texas (commission or PUC) will hold a workshop regarding Project No. 41894, *Activities Relating to Transfer of Water Program from TCEQ to PUCT,* Friday, October 10, 2014, at 10:00 a.m. The workshop will be held in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

The purpose of the workshop will be for the commission staff to discuss and for interested stakeholders to ask questions about the procedures for making filings at the PUC, including how to properly file confidential materials. The filing requirements of the PUC differ in significant respects from the filing requirements at the Texas Commission on Environmental Quality. This workshop is intended to educate and inform interested stakeholders on how to file documents with and retrieve documents from the PUC.

A general description of the filing procedures at the PUC may be found on the PUC's website at: http://www.puc.texas.gov/industry/filings/Default.aspx.

Questions concerning the workshop or this notice should be referred to Tammy Benter, (512) 936-7146 or at water@puc.texas.gov. Questions concerning commission filing requirements may be directed to Chris Burch at (512) 936-7180. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201404353
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 10, 2014

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Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of Llano, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a Professional Engineering Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualifications for professional engineering design services for the current aviation project as described below.

Current Project: City of Llano; TxDOT CSJ No.: 1514LLANO.

Scope: Provide engineering/design services to:

1. Rehabilitate and Mark Runway 17-35

2. Rehabilitate Hangar Access Taxiways

3. Rehabilitate Parallel Taxiway

4. Rehabilitate Cross Taxiways

5. Rehabilitate Apron

6. Install Obstruction Lights

There is no DBE Goal for this project. The goal will be reset for the construction phase. The TxDOT Project Manager is Ed Mayle.

The following is a listing of proposed projects at the Llano Municipal Airport during the course of the next five years through multiple grants.

Future scope work items for engineering/design services within the next five years may include the following:

Install culverts; extend runway; extend MIRLs; extend Parallel Taxiway; rehabilitate and mark Runway 17-35; rehabilitate Hangar Access Taxiways; rehabilitate Parallel Taxiway; rehabilitate Apron; rehabilitate Cross Taxiways; replace MIRLs and signs; replace rotating beacon; and evaluate/replace associated airfield electrical items.

The City of Llano reserves the right to determine which of the above services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services 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.html by selecting "Llano Municipal 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.

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, 1(800) 68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at http://www.txdot.gov/inside-txdot/division/aviation/projects.html. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. 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 8 1/2" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s 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.

Please note:

SEVEN completed copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704, no later than October 21, 2014, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow.

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 the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. 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 1(800) 68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager. For technical questions, please contact Ed Mayle, Project Manager.

TRD-201404356
Leonard Reese
Associate General Counsel
Texas Department of Transportation
Filed: September 10, 2014

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How to Use the Texas Register

Information Available: The 14 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.

Secretary of State - opinions based on the election laws.

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.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

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.

Review of Agency Rules - notices of state agency rules review.

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 39 (2014) is cited as follows: 39 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 "39 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 39 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, Room 245, 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 ***Register*** is available in an .html version as well as a .pdf (portable document format) 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 following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §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
40 TAC §3.704.....950 ***(P)***

SALES AND CUSTOMER SUPPORT

Sales - To purchase additional subscriptions or back issues (beginning with Volume 30, Number 36 – Issued September 9, 2005), you may contact LexisNexis Sales at 1-800-223-1940 from 7am to 7pm, Central Time, Monday through Friday.

Note**: Back issues of the ***Texas Register, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (512) 463-5561.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7am to 7pm, Central Time, Monday through Friday.

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