TEXAS REGISTER

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Caroline Kirsch
11th Grade

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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Texas Lottery Commission

Public Utility Commission of Texas

Texas Department of Transportation

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://texasattorneygeneral.gov/og/open-government

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

EMERGENCY RULES

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 2. CHRONIC WASTING DISEASE - MOVEMENT OF BREEDER DEER

31 TAC §§65.90 - 65.93

The Texas Parks and Wildlife Department is renewing the effectiveness of the emergency adoption of §§65.90 - 65.93 for a 60-day period. The text of the new sections was originally published in the September 4, 2015, issue of the *Texas Register* (40 TexReg 5566).

Filed with the Office of the Secretary of State on December 14, 2015.

TRD-201505594
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Original effective date: August 18, 2015
Expiration date: February 13, 2016
For further information, please call: (512) 389-4775

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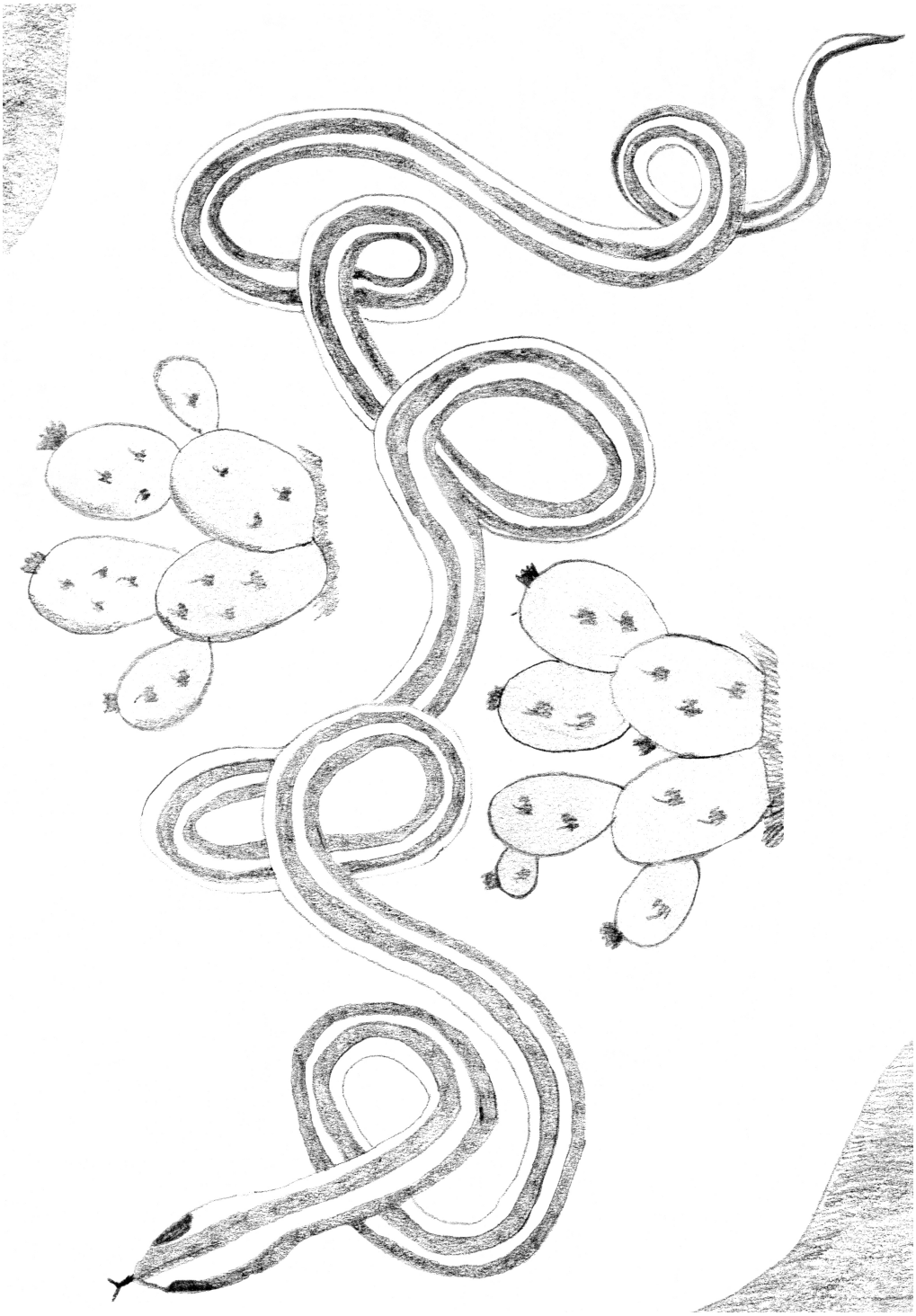

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views,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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER G. STAR+PLUS

1 TAC §353.609

The Texas Health and Human Services Commission (HHSC) proposes new 1 TAC §353.609, concerning the Quality Incentive Payment Program for Nursing Facilities.

BACKGROUND AND JUSTIFICATION

During the 83rd Session, the Texas Legislature outlined its goals for the Medicaid managed care carve-in of nursing facilities. In implementing the nursing facility carve-in, HHSC was directed to encourage transformative efforts in the delivery of nursing facility services, including "efforts to promote a resident-centered care culture through facility design and services provided" (Senate Bill 7, 83rd Legislature, Regular Session, 2013).

The goal of transformative efforts was reinforced during the 84th Legislative Session, General Appropriations Act, House Bill 1, Article II, Rider 97. To that end, HHSC is proposing the creation of the Quality Incentive Payment Program (QIPP). The goal of QIPP is to establish incentive payments to nursing facilities based on quality and innovative improvements. Such quality and innovation improvements must promote culture change, small house models, staffing enhancements, or improved quality of care and life for nursing facility residents. Nursing facilities have the option of proposing pre-designed projects or proposing their own projects that seek to innovate and improve quality. Eligible nursing facilities must negotiate with their contracted Medicaid managed care organizations to create a mutually agreeable QIPP project with associated metrics and values. Ultimately, the QIPP projects must be approved by HHSC.

All facilities interested in QIPP will have to meet specific eligibility criteria to participate. Additionally, the non-federal share of any QIPP payment must be comprised of local, public funds.

HHSC is currently working with the Centers for Medicare and Medicaid Services (CMS) for their approval of the QIPP program and its proposed policies. As such, the proposed rule may change to conform to any final agreement with CMS.

SECTION-BY-SECTION SUMMARY

Proposed new §353.609(a) describes the purpose and goals of QIPP.

Proposed new §353.609(b) defines key terms used in the section.

Proposed new §353.609(c) describes the eligibility criteria for QIPP.

Proposed new §353.609(d) describes the process for negotiating QIPP projects and the HHSC approval process.

Proposed new §353.609(e) describes the requirements for individual QIPP projects.

Proposed new §353.609(f) describes the calculation for QIPP payments.

Proposed new §353.609(g) describes the responsibilities for governmental entities to transfer the non-federal share of QIPP payments.

Proposed new §353.609(h) describes the reconciliation process for intergovernmental transfers made for QIPP payments.

Proposed new §353.609(i) describes situations in which MCOs may recoup QIPP funds from nursing facilities.

Proposed new §353.609(j) describes the audit requirements on entities participating in QIPP.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the proposed rule will be in effect, there will be no fiscal impact to state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that the rule would have no adverse economic effect on small businesses or micro-businesses. Participation in QIPP is voluntary; therefore implementation of the rule does not create an adverse economic impact to any small business or micro-business.

PUBLIC BENEFITS AND COSTS

Charles Smith, Chief Deputy Executive Commissioner, has determined that, for each year of the first five years the rule will be in effect, the public benefit expected as a result of adopting the proposed rule is the incentivizing of improvements in care in participating nursing facilities.

Ms. Rymal anticipates that, for each year of the first five years the rule will be in effect, there will be no economic cost to persons required to comply with the rule. There is no anticipated impact to a local economy or local employment for the first five years the proposed rule will be in effect.

REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the

specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Kate Layman, Health and Human Services Commission, Mail Code-H320, P.O. Box 13247, Austin, Texas, 78711; by fax to (512) 462-6202; or by e-mail to Katherine.Layman@hhsc.state.tx.us, within 30 days after publication of this proposal in the *Texas Register.*

PUBLIC HEARING

A public hearing is scheduled for January 15, 2016, from 4:00 p.m. to 5:00 p.m. (central time) in the Brown-Heatly Public Hearing Room located at 4900 North Lamar Blvd, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Kristine Dahlmann at (512) 462-6299.

STATUTORY AUTHORITY

The new rule is proposed 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 new rule implements Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§353.609. Quality Incentive Payment Program for Nursing Facilities.

(a) Introduction.

(1) HHSC is directed by the Texas Legislature to create the Quality Incentive Payment Program (QIPP) for nursing facilities that have a source of public funding for the non-federal share of any such payment.

(2) This section establishes and describes the QIPP for nursing facilities participating in the STAR+PLUS Program.

(3) The goals of QIPP include promoting:

(A) culture change;

(B) small house models;

(C) staffing enhancements; and

(D) improved quality of care and life for nursing facility residents.

(b) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) DADS--The Texas Department of Aging and Disability Services or its successor agency.

(2) Governmental entity--A state agency or a political subdivision of the state, such as a city, county, hospital district, or hospital authority.

(3) Intergovernmental transfer (IGT)--A transfer of public funds from a governmental entity to HHSC.

(4) Letter of Agreement (LOA)--A written agreement by and between a STAR+PLUS managed care organization (MCO) and a nursing facility describing QIPP projects.

(5) MCO--A STAR+PLUS managed care organization.

(6) Non-state government-owned nursing facility--A nursing facility where a non-state governmental entity holds the license and is a party to the nursing facility's Medicaid provider enrollment agreement with the state.

(7) Per-member-per-month (PMPM)--Unit of measure for MCO capitation payments.

(8) Program period--Time period to which the PMPM that includes funding for the relevant QIPP project(s) applies. The program period is typically equal to the state fiscal year but can vary when mid-year PMPM adjustments are made.

(9) Public Funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a governmental entity. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(10) QIPP Rate Component--The portion of an MCO's PMPM associated with a specific QIPP project.

(11) Regional Healthcare Partnership (RHP)--A collaboration of interested participants that work collectively to develop and submit to the state a plan for regional health care delivery system reform. Regional Healthcare Partnerships support coordinated, efficient delivery of quality care and a plan for investments in system transformation that is driven by the needs of local hospitals, communities, and populations.

(12) Special focus facility--A nursing facility whose quality of care has consistently demonstrated failure to maintain compliance and a history of facility practices that have resulted in harm to residents, as measured by the most recent three State recertification surveys.

(c) Eligibility for QIPP. In order to be eligible for QIPP, a nursing facility must:

(1) be licensed as a nursing facility in Texas;

(2) be contracted with both HHSC and an MCO to provide Medicaid nursing facility services;

(3) have submitted, and be eligible to receive payment for, a Medicaid managed care nursing facility claim for payment during the program period;

(4) have a bona fide source of public, non-federal funds that is located within the same RHP as, or within 150 miles of, the nursing facility for which the funds are to be transferred. This geographic proximity criterion does not apply to:

(A) nursing facilities that were grandfathered into the former Minimum Payment Amounts Program (MPAP); or

(B) governmental entities that can establish a good cause for this exemption;

(5) have a signed certification of participation submitted by both the nursing facility and the source of public, non-federal funds (for privately-owned nursing facilities);

(6) have submitted a signed IGT Responsibility Agreement for either themselves or, if the nursing facility is not owned by a governmental entity, for the governmental entity that will be the source of the public, non-federal funds for the nursing facility prior to the deadline specified by HHSC;

(7) if the nursing facility's source of public, non-federal funds is to be a governmental entity that owns the nursing facility, the nursing facility must be a non-state government-owned nursing facility. A facility may only be eligible if DADS has assigned the facility's contract to a non-state government entity by the last day of the sixth month prior to the beginning of the program period, with a Medicaid contract effective date equal to the day after the assignment date, or earlier. For example, if the program period begins September 1, 2016, DADS must assign the contract by March 31, 2016, with an effective date of April 1, 2016, or earlier;

(8) submit an acceptable QIPP project proposal prior to the deadline specified by HHSC;

(9) meet one of the following:

(A) have a certified Medicaid bed occupancy rate (as defined in 40 TAC §19.2322(a)(9) (relating to Medicaid Bed Allocation Requirements)) greater than or equal to 50 percent;

(B) have a certified Medicaid bed occupancy rate that is no more than 15 percentage points lower than the average certified Medicaid bed occupancy rate for the county in which the nursing facility is located;

(C) can show evidence of a plan to build a smaller replacement facility that is culture change oriented; or

(D) can establish good cause for an exception to this criterion, which HHSC will evaluate on a case-by-case basis;

(10) not be a special focus facility as determined by CMS as of the project proposal submission date; and

(11) not have a proposed license revocation pending under §242.061(a-2) of the Texas Health and Safety Code (i.e., the 3-Strike Rule).

(d) QIPP Project Proposal Negotiation and Approval.

(1) A QIPP project proposal is negotiated between a nursing facility and an MCO. All LOAs are between one nursing facility and one MCO. A nursing facility can contract with one MCO for a project based on the benefit of the project to all Medicaid residents of the facility. If a nursing facility contracts with more than one MCO, it may negotiate separate LOAs with each MCO, but these LOAs must be for distinct projects.

(A) Each eligible nursing facility must submit an LOA between the facility and an MCO, containing the required details of the QIPP project proposal, to HHSC.

(B) The LOA must contain the following details:

(i) a project overview;

(ii) an itemized predicted cost for the project;

(iii) certification by the nursing facility that there is no duplication of federal funding;

(iv) a schedule of reporting of metrics to the MCO and payments to the nursing facility for achieving metrics;

(v) the relevant measureable goals, and performance metrics for determining success in meeting those goals;

(vi) the proposed valuation for the project; and

(vii) the process that will be used by the MCO to recoup payments in the event of:

(I) a disallowance by CMS;

(II) a payment made in error;

(III) payments used to pay a contingent, consulting, or legal fee; and

(IV) payments associated with fraudulent or inaccurate reporting of metric performance or fraudulent or misleading statements on a nursing facility change of ownership application or during the change of ownership process.

(C) While the proposed valuation is based on the benefit of the project to all residents of the facility, the facility's QIPP payments are tied to the percent of the facility's total residents that are Medicaid beneficiaries, including dually-certified residents where Medicaid is the primary payer.

(2) HHSC reviews and approves all QIPP project proposals. In making a determination as to the approvability of a QIPP project proposal, HHSC analyzes the project proposal for the following factors:

(A) relationship of the project to the goals of QIPP as described in subsection (a)(3) of this section;

(B) how the nursing facility proposes to measure progress towards and final achievement of the goal of its proposal, including the appropriateness of the measures selected;

(C) LOA with the MCO must not allow for payment prior to the achievement of a metric;

(D) reasonable forecasted costs to implement the project; and

(E) reasonable valuation, including the relationship of the proposed valuation of the project to the forecast costs and expected improvement.

(3) In determining forecasted costs of a QIPP project, HHSC considers:

(A) individual nursing facility size;

(B) complexity of project;

(C) size and scope of project;

(D) size of target population; and

(E) investment and resources needed to implement the project.

(4) If HHSC does not approve a project proposal, it notifies the nursing facility of the reason the proposal was not approved. The facility has the opportunity to revise the proposal to address any concerns raised by HHSC. Final approval of a QIPP project proposal lies solely with HHSC. There is no review or appeal of a QIPP project proposal denial.

(e) QIPP Project Requirements.

(1) An eligible nursing facility must:

(A) choose from a list of QIPP projects as determined by HHSC; or

(B) create a unique QIPP project. Such a project must meet the goals of the QIPP program, as described in subsection (a)(3) of this section, and must also be approved in accordance with subsection (d) of this section.

(2) All QIPP projects must terminate at the end of the program period for which that project is approved, although a QIPP project may also contribute to a multi-year outcome.

(f) QIPP Payments.

(1) HHSC calculates the addition to an MCO's PMPM payment from HHSC associated with the QIPP project, including a percentage of the project's valuation to cover the MCO's administrative costs associated with the project and an additional percentage of the valuation to cover premium taxes.

(2) An MCO is required to make a payment to a nursing facility approved to participate in QIPP once the nursing facility reaches the established metrics listed in the QIPP project proposal. QIPP payments may be made in lump sums.

(3) If a participating nursing facility fails to achieve a QIPP metric, it cannot receive a payment for that metric. HHSC recoups the PMPM capitation payment funds associated with the metric from the MCO. HHSC returns the non-federal share to the IGT-entity and the federal share to the federal government.

(4) HHSC may consider allowing unearned payments to accrue and be paid in future payment periods as associated metrics are met on a case-by-case basis.

(5) Funds may not be carried over from one program period to the next program period.

(g) Intergovernmental Transfer Responsibility.

(1) A nursing facility participating in QIPP must secure an allowable source of public funds to comprise the non-federal share of QIPP payments plus 10 percent. The funds that comprise the non-federal share of QIPP payments must meet all federal and state requirements in order for HHSC to consider those funds allowable. Those funds are transferred to HHSC through an IGT in a manner determined by HHSC.

(2) An IGT meant to fund a QIPP payment is due to HHSC on a monthly basis, with the first IGT due approximately one month prior to the first PMPM payment to the MCO for the program period. The exact date of the transfer is determined by HHSC.

(3) All IGT calculations are solely at the discretion of HHSC and are not open to desk review or appeal.

(h) Reconciliation of IGTs.

(1) A reconciliation occurs no later than 30 days after the end of the QIPP program period.

(A) For each Medicaid program and service area in which a nursing facility participates in QIPP, HHSC determines the amount expended for the program period by multiplying the QIPP Rate Component by the total member months included in the program period. Total member months include any adjustments to enrollment that occurred for the program period prior to the reconciliation.

(B) HHSC compares the amount transferred by the Governmental Entity to HHSC for the program period to the non-federal percentage of the QIPP Rate Component expended by HHSC for the program period.

(i) If the amount transferred by the Governmental Entity exceeds 102 percent of the non-federal percentage of the QIPP Rate Component expended by HHSC for all participating nursing facilities owned by, or affiliated with, the Governmental Entity, HHSC refunds the difference between the amount transferred and 102 percent of the amount expended by HHSC.

(ii) If the amount transferred by the Governmental Entity is less than 102 percent of the non-federal percentage of the QIPP Rate Component expended by HHSC for all participating nursing facilities owned by, or affiliated with, the Governmental Entity, HHSC notifies the Governmental Entity of the amount of the shortfall and of a deadline for the Governmental Entity to transfer the shortfall to HHSC.

(C) HHSC may complete additional interim reconciliations between the end of the program period and the final reconciliation described in paragraph (2) of this subsection as updated enrollment data for the program period becomes available.

(2) A second reconciliation occurs no later than 25 months after the end of the program period.

(A) For each Medicaid program and service area in which a nursing facility participates in QIPP, HHSC determines the amount expended for the program period by multiplying the QIPP Rate Component by the total member months included in the program period. Total member months include any adjustments to enrollment that occurred subsequent to a prior reconciliation.

(B) HHSC compares the amount transferred by the Governmental Entity to HHSC for the program year to the non-federal percentage of the QIPP Rate Component expended by HHSC for the program period.

(i) If the amount transferred by the Governmental Entity exceeds the non-federal percentage of the QIPP Rate Component expended by HHSC for all participating nursing facilities owned by, or affiliated with, the Governmental Entity, HHSC refunds the excess.

(ii) If the amount transferred by the Governmental Entity is less than the non-federal percentage of the QIPP Rate Component expended by HHSC for all participating nursing facilities owned by, or affiliated with, the Governmental Entity, HHSC notifies the Governmental Entity of the amount of the shortfall and of the 30-day deadline for the Governmental Entity to transfer the shortfall to HHSC.

(3) If at any time after the second reconciliation described in paragraph (2) of this subsection, HHSC determines that the amount previously transferred by the Governmental Entity is less than the non-federal percentage of the QIPP Rate Component expended by HHSC for all participating nursing facilities owned by, or affiliated with, the Governmental Entity, HHSC notifies the Governmental Entity of the amount of the shortfall and of the 30-day deadline for the Governmental Entity to transfer the shortfall to HHSC.

(4) If a Governmental Entity does not timely complete any transfer described in this subsection, HHSC requests that its MCO(s) withhold any or all future Medicaid payments from the nursing facilities owned by, or affiliated with, the Governmental Entity until the MCO(s) has recovered an amount equal to the amount of the shortfall. Nursing facilities owned by, or affiliated with, such a Governmental Entity are ineligible for future QIPP program periods.

(i) Recoupment.

(1) If payments under this section result in an overpayment to a nursing facility, or in the event of a disallowance by CMS of federal participation related to a nursing facility's receipt of or use of these payments, the MCO(s) must recoup an amount equivalent to the amount of the QIPP payment that was overpaid or disallowed. HHSC then re-

coups that amount from the MCO(s). Alternatively, HHSC may choose to recoup the funds directly from the nursing facility.

(2) QIPP payments under this section may be subject to any adjustments for payments made in error, including, without limitation, adjustments made under the Texas Administrative Code, the Code of Federal Regulations, and state and federal statutes. The MCO(s) must recoup an amount equivalent to any such adjustment from the nursing facility in question. HHSC then recoups that amount from the MCO(s). Alternatively, HHSC may choose to recoup the funds directly from the nursing facility.

(3) If HHSC determines that part of any payment made under QIPP was used to pay a contingent fee, consulting fee, or legal fee associated with the nursing facility's receipt of the QIPP payment, the MCO(s) must recoup an amount equal to the QIPP payment from the nursing facility in question. HHSC then recoups that amount from the MCO(s). Alternatively, HHSC may choose to recoup the funds directly from the nursing facility.

(4) If HHSC determines that an ownership change was based on fraudulent or misleading statements on a nursing facility change of ownership (CHOW) application or during the CHOW process, the MCO(s) must recoup an amount equal to the QIPP payment from the nursing facility in question for any program period affected by the fraudulent or misleading statement. HHSC then recoups that amount from the MCO(s). Alternatively, HHSC may choose to recoup the funds directly from the nursing facility.

(j) Audit.

(1) All QIPP projects and payments are subject to audit.

(2) A participating nursing facility must maintain all relevant documentation and have that documentation available for review by HHSC or CMS upon request.

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

Filed with the Office of the Secretary of State on December 17, 2015.

TRD-201505706
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: January 31, 2016
For further information, please call: (512) 424-6900

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 5. ADMINISTRATION OF FINANCE AGENCIES

7 TAC §5.101

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner (collectively, the finance agencies) proposes to amend §5.101, concerning Employee Training and Education Assistance Programs.

Government Code §656.048 was amended effective September 1, 2015, by Section 3 of H.B. 3337 (Acts 2015, 84th Leg., R.S., Ch. 366, §3), to establish certain requirements for agency tuition reimbursement programs. This amendment is proposed to reflect the new statutory requirement that the agency head authorize tuition reimbursement payment for an employee who has successfully completed a course at an institution of higher education.

Charles G. Cooper, Commissioner, Texas Department of Banking, Caroline C. Jones, Commissioner, Department of Savings and Mortgage Lending, and Leslie L. Pettijohn, Consumer Credit Commissioner ("the commissioners"), have determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule as amended.

The commissioners have also determined that, for each year of the first five years the amendment as proposed is in effect, the public benefit anticipated as a result of amending the rule is that the agencies' policies for tuition reimbursement will demonstrate greater oversight and accountability.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amendment must be submitted no later than 5:00 p.m. on January 21, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to *legal@dob.texas.gov.*

The amendment is proposed pursuant to Finance Code, §5.101, which provides for training and education assistance to employees of the finance agencies.

Finance Code, §5.101, is affected by the proposed amended section.

§5.101. Employee Training and Education Assistance Programs.

(a) - (f) (No change.)

(g) In order to receive tuition reimbursement for a course offered by an institution of higher education, the employee must successfully complete the course, and the executive head of the finance agency must personally authorize the tuition reimbursement payment.

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 December 18, 2015.

TRD-201505771
Catherine Reyer
General Counsel
Finance Commission of Texas
Earliest possible date of adoption: January 31, 2016
For further information, please call: (512) 475-1301

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PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §33.13

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes amendments to §33.13, concerning how to obtain a new money services business license. The amended rule is proposed to clarify that the deadlines to respond to new license applications for money transmitter and currency exchange licenses also apply to a request for approval of a proposed change of control of a money services business.

In accordance with Texas Finance Code §151.605(b), a person may not directly or indirectly acquire control of a license holder or a person in control of a license holder without the prior written approval of the commissioner. The remaining subsections of §151.605 explain the requirements for obtaining such approval from the commissioner and the criteria used by him or her in making a final determination. However, it does not currently set timelines for the commissioner's and department's response to a proposed change of control.

The department proposes two amendments to §33.13 to provide internal deadlines for the commissioner and department and provide clarity to license holders seeking change of control approval. Currently, Section 33.13(a) explains that the section applies to applicants seeking a new money transmission or currency exchange license under Finance Code, Chapter 151. The first change establishes that the time tables and deadlines discussed in §33.13 also apply to a request for approval of a proposed change of control of a money services business licensed under Finance Code, Chapter 151. The department also proposes an amendment to the title of §33.13 to clarify that it pertains to proposed change of control deadlines. This change will enable license holders to easily locate the time tables imposed.

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Ms. Newberg also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is that both regulated entities and department analysts will have clarity on the timeframe for change of control approvals. This will produce greater efficiencies for regulated entities and the department.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amendment must be submitted no later than 5:00 p.m. on January 21, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to *legal@dob.texas.gov.*

The amendment is proposed under Finance Code, §151.102(a)(1), which provides that the commission may adopt rules to administer and enforce Chapter 151, including rules necessary or appropriate to implement and clarify Chapter 151.

Finance Code, §151.605, is affected by the proposed amended section.

§33.13. How Do I Obtain a New License and What are the Deadlines Associated with Applications?

(a) Does this section apply to me? This section applies if you seek a new money transmission or currency exchange license under Finance Code, Chapter 151. The time tables and deadlines established in this section also apply to a request for approval of a proposed change of control of a money services business licensed under Finance Code, Chapter 151.

(b) - (j) (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 December 18, 2015.

TRD-201505773
Catherine Reyer
General Counsel
Texas Department of Banking
Earliest possible date of adoption: January 31, 2016
For further information, please call: (512) 475-1301

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

SUBCHAPTER B. RULES FOR CREDIT ACCESS BUSINESSES

The Finance Commission of Texas (commission) proposes new §83.3003 (repeal and replace); proposes amendments to §§83.3004, 83.5001, 83.6003, 83.6006, 83.6007, and 83.6008; and proposes the repeal of §83.3003 (repeal and replace), in 7 TAC Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses.

In general, the purpose of the proposal regarding these rules for credit access businesses is to implement changes resulting from the commission's review of Chapter 83, Subchapter B under Texas Government Code, §2001.039.

The proposed rule changes clarify three main areas: (1) consumer disclosures, (2) reporting requirements, and (3) license transfers.

This is the second of two anticipated rule actions for credit access businesses. In this issue of the *Texas Register,* the commission is concurrently adopting the first rule action, which includes rule changes relating to definitions, license applications, fees, examination authority, and recordkeeping requirements.

The notice of intention to review 7 TAC Chapter 83, Subchapter B was published in the September 11, 2015, issue of the *Texas*

Register (40 TexReg 6165). The commission received no comments in response to that notice.

The agency circulated an early draft of proposed changes to interested stakeholders. The agency then held a stakeholders meeting where attendees provided oral precomments. In addition, the agency received one informal written precomment. Certain concepts recommended by the precommenters have been incorporated into this proposal, and the agency appreciates the thoughtful input provided by stakeholders.

The individual purposes of the proposed amendments are outlined in the paragraphs to follow.

Section 83.3003 is proposed for repeal and replacement with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. Currently, Section 83.3003 describes what constitutes a transfer of ownership requiring the filing of a transfer application. The proposed new rule largely maintains the requirements under the current rule, but it provides two different paths the transferee can take for a transfer of ownership: either an application to transfer the license, or a new license application on transfer of ownership. In response to an informal comment, the proposal refers to the new application as a "new license application on transfer of ownership." The amendments outline what the application has to include, the timing requirements, and which parties are responsible at different points in the transfer process. Subsection (a) describes the purpose of the new section. Subsection (b) defines terms used throughout the subsection. In particular, subsection (b)(3) defines the phrase "transfer of ownership," listing different types of changes in acquisition or control of the licensed location. In response to a precomment, this definition includes technical changes to the definition of "transfer of ownership" currently codified at §83.3003(a). These changes include placing the reference to acquisition by gift, devise, or descent in the general language at the beginning of the definition, and removing the current rule's statement that a transfer of ownership includes an acquisition where the Office of Consumer Credit Commissioner (OCCC) "has reason to believe that proper regulation of the licensee dictates that a transfer must be processed."

Subsection (c) specifies that a license may not be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §393.620. Subsection (d) provides a timing requirement, stating that a complete license transfer application or new license application on transfer of ownership must be filed no later than 30 days after the transfer of ownership. Subsection (e) outlines the requirements for the license transfer application or new license application on transfer of ownership. These requirements include complete documentation of the transfer of ownership, as well as a complete license application for transferees that do not hold an existing credit access business license. Subsection (e)(5) explains that the application may include a request for permission to operate.

Subsection (f) provides that the OCCC may issue a permission to operate to the transferee. A permission to operate is a temporary authorization from the OCCC allowing a transferee to operate while final approval is pending for an application. The subsection's second sentence states: "A request for permission to operate may be denied even if the application contains all of the required information." This sentence is similar to a sentence in the current rule at §83.3003(d). One precommenter requested that this sentence be removed, stating that it is overly broad and recommending that the rule should specify the categories of reasons for denying the request for permission to operate. The agency believes that listing the categories for denying a permission to operate, such as enforcement and management issues, is unnecessary. The permission to operate is a temporary authorization, and denial of the request is not a final denial of the license application. In addition, prudent parties can submit application materials well in advance of the transfer of ownership. By doing this, the parties can ensure that they have resolved outstanding issues without having to rely on the temporary permission to operate.

Subsection (g) specifies the transferee's authority to engage in business if the transferee has filed a complete application including a request for permission to operate. It also requires the transferee to immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. One precommenter requested a "time frame where the agency either makes a decision before the deadline, or tacitly approves the request by not making the decision before the deadline." The agency believes that a time frame for the permission to operate is unnecessary. As discussed above, denial of the request is not a final denial of the license application. Although the agency has occasionally denied requests for permission to operate in certain situations in the past, the agency would generally deny the application if there were a significant issue preventing approval. Subsection (h) describes the situations where the transferor is responsible for business activity at the licensed location, situations where the transferee is responsible, and situations where the transferor and transferee share joint and several responsibility.

In §83.3004, concerning Change in Form or Proportionate Ownership, conforming changes are proposed corresponding to proposed new §83.3003. Throughout subsections (b) and (c), references have been added to the second path a transferee may take, i.e., a new license application on transfer of ownership.

In §83.5001, concerning Data Reporting Requirements, the proposed amendments would codify the administrative penalty structure currently used by the agency, where the penalties increase the more times a credit access business fails to send in a timely, accurate report within a reporting year. Subsection (e)(2) provides a $100 administrative penalty per licensed location for the first violation, $500 for the second violation, and $1,000 for the third and subsequent violations. In addition, subsection (e)(3) provides for license suspension or revocation for the fourth or subsequent violation. These amendments are based on Texas Finance Code, §14.251(a-1), which authorizes the agency to assess an administrative penalty against a credit access business that knowingly and wilfully violates Chapter 393, and Texas Finance Code, §393.614(a), which authorizes the agency to suspend or revoke a credit access business license if the licensee knowingly violates Chapter 393.

In §83.6003, concerning Posting of Fee Schedule and Notices, the proposed amendments would update the in-store notice with the OCCC's contact information. Under Texas Finance Code, §393.222(a)(2), a credit access business must post a notice containing the OCCC's contact information in a conspicuous location. The proposed amendment to subsection (a)(2) includes the OCCC's updated website and the updated email address for consumer complaints. The proposed amendment also includes updated language regarding how to file a complaint. The proposed amendment to subsection (b)(2) contains a conforming change describing the notice as the "OCCC notice."

In §83.6006, concerning Format, a proposed amendment to subsection (c) specifies that the consumer cost disclosure must fit

on one page, printed on one side. This replaces the current language stating that the disclosure must be printed on two pages. The proposed amendment conforms to the proposed amended figures in §83.6007, which are shortened from two pages to one.

In §83.6007, concerning Consumer Disclosures, proposed amendments in subsections (a) through (d) make a technical correction to replace the word "or" with "and." The proposed amendments require the credit access business to provide the consumer cost disclosure "before a credit application is provided and before a financial evaluation occurs." One precommenter requested clarification that the disclosure must be provided only once. To clarify, the credit access business must provide the disclosure once, at a time that is both before a credit application is provided and before a financial evaluation occurs. This provision is based on Texas Finance Code, §393.222(a), which requires the credit access business to provide the disclosure "[b]efore providing services described by Section 393.221(1)," that is, before the credit access business assists the consumer in obtaining a payday or title loan.

The proposal also includes amendments to the figures accompanying §83.6007, which are the model forms for the consumer cost disclosure. The proposed amendments implement Texas Finance Code, §393.223(a), which authorizes the commission to adopt rules including the disclosure. There are two primary purposes to the proposed amendments to the disclosures. First, the proposed amendments streamline the disclosures to simplify layout and remove redundant information. Second, the proposed amendments include updated information regarding the cost of comparable forms of consumer credit, as well as updated information on patterns of repayment based on 2014 quarterly and annual reports provided by credit access businesses to the OCCC.

In addition, the proposed amendments to the consumer disclosures include information required by state and federal law. Texas Finance Code, §393.223(a), requires the consumer disclosure to include "(1) the interest, fees, and annual percentage rates, as applicable, to be charged on a deferred presentment transaction or on a motor vehicle title loan, as applicable, in comparison to interest, fees, and annual percentage rates to be charged on other alternative forms of consumer debt; (2) the amount of accumulated fees a consumer would incur by renewing or refinancing a deferred presentment transaction or motor vehicle title loan that remains outstanding for a period of two weeks, one month, two months, and three months; and (3) information regarding the typical pattern of repayment of deferred presentment transactions and motor vehicle title loans." The consumer disclosure must also include additional items to comply with the advertising provisions of the Truth in Lending Act, 15 U.S.C. §1664, and Regulation Z, 12 C.F.R. §1026.24. In particular, Regulation Z, 12 C.F.R. §1026.24(d)(2), requires disclosure of the annual percentage rate and terms of repayment. Also, 12 C.F.R. §1026.24(c) provides that if a simple rate of interest other than the annual percentage rate is disclosed, it must be "stated in conjunction with, but not more conspicuously than, the annual percentage rate."

The proposed amendments to the consumer disclosures include changes based on oral precomments made at the stakeholders meeting on the proposed rules. Two precommenters suggested that the annual percentage rate should be more prominent than the interest rate paid to the third-party lender, and that the interest rate should be disclosed below the dollar amount of interest. In response to this precomment, the interest rate has been placed near the dollar amount of interest. One precommenter also suggested that for the multiple-payment disclosures, the disclosure should include the total amount of fees and interest the consumer would pay at the end of the term of the loan, in addition to the amounts for two weeks, one month, two months, and three months. In response to this precomment, the proposed multiple-payment disclosures include an additional row with this information. Credit access businesses may omit this extra row if the loan term is two weeks, one month, two months, or three months, and they may move the extra row if the loan term falls in between one of the other periods.

In §83.6008, concerning Permissible Changes, the proposed amendments include an updated citation to Regulation Z. In addition, proposed new subsection (a)(6) specifies that the disclosure may include a form number, and proposed new subsection (b) specifies that the credit access business may make changes to the consumer disclosure that the OCCC approves in writing.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rule changes are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn also has determined that for each year of the first five years the rule changes are in effect, the public benefit anticipated as a result of the changes will be increased protection of consumers, clear and consistent regulations for credit access businesses, and enhanced compliance with the law. Another public benefit of these rule amendments will be increased uniformity and consistency in credit contracts.

Additional economic costs may be incurred by a person required to comply with this proposal. The agency anticipates that any costs resulting from the proposal would involve complying with the proposed amendments to the consumer disclosure rules contained in §§83.6003, 83.6006, 83.6007, and 83.6008.

For those who will be required to comply with the proposed disclosure amendments, the anticipated costs would include the costs associated with producing new forms, and costs attributable to the loss of obsolete forms inventory.

The agency has attempted to lessen any potential costs by providing on the agency's website fillable PDF versions of the disclosure forms free of charge. Additionally, the agency is considering a delayed implementation date for use of the revised forms, which will help minimize potential costs and allow use of current forms inventory. In particular, the agency is considering possible compliance dates of either September 1, 2016, or January 1, 2017, and invites comments on this issue.

For licensees not using the fillable forms provided by the agency online, any additional economic costs are anticipated to be minimal, with an estimated programming time of less than five hours to produce the updated forms. Furthermore, these costs would be partially offset by reduction in paper costs, as all of the forms have been reduced from two pages to one page each.

Regarding the proposed license transfer rule changes contained in §83.3003 and §83.3004, there is no anticipated cost to persons who are required to comply with the changes to these two rules as proposed.

Regarding the proposed amendments concerning data reporting in §83.5001, any costs associated with these amendments would not be incurred by licensees that timely and accurately file their quarterly and annual reports. For those compliant licensees, any costs are avoidable in their entirety. For licensees

not in compliance with the current reporting requirements, the proposed amendments to §83.5001 do not impose any increased costs, as the amendments simply memorialize the agency's current penalty practice. As a result, there is no anticipated additional cost to persons who are required to comply with the amendments to §83.5001 as proposed.

Overall, the agency anticipates that any costs involved to comply with the proposal will be minimal for most licensees. Aside from the previously outlined costs to produce updated disclosure forms, there will be no other effects on individuals required to comply with the rule changes as proposed.

The agency is not aware of any adverse economic effect on small or micro-businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the agency invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register.* At the conclusion of business on the 31st day after the proposal is published in the *Texas Register,* no further written comments will be considered or accepted by the commission.

DIVISION 3. APPLICATION PROCEDURES

7 TAC §83.3003

This repeal is proposed under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G.

The statutory provisions affected by the proposed repeal are contained in Texas Finance Code, Chapter 393.

§83.3003. Transfer of License.

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 December 18, 2015.

TRD-201505829
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: January 31, 2016
For further information, please call: (512) 936-7621

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7 TAC §83.3003, §83.3004

These rule changes are proposed under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G. In addition, the amendments to §83.5001 are proposed under Texas Finance Code, §393.622(a)(2), which authorizes the commission to adopt rules relating to reporting. The amendments to §83.6005 are proposed under Texas Finance Code, §393.222(b), which authorizes the commission to adopt rules to implement the requirement to provide a notice containing the OCCC's contact information. The amendments to §83.6006, §83.6007, and §83.6008 are proposed under Texas Finance Code, §393.223(c), which authorizes the commission to adopt rules to implement the requirement to provide the consumer cost disclosure.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

§83.3003. Transfer of License; New License Application on Transfer of Ownership.

(a) Purpose. This section describes the license application requirements when a licensed entity transfers its license or ownership of the entity. If a transfer of ownership occurs, the transferee must submit either a license transfer application or a new license application on transfer of ownership under this section.

(b) Definitions. The following words and terms, when used in this section, will have the following meanings:

(1) License transfer--A sale, assignment, or transfer of a credit access business license.

(2) Permission to operate--A temporary authorization from the OCCC, allowing a transferee to operate under a transferor's license while final approval is pending for a license transfer application or a new license application on transfer of ownership.

(3) Transfer of ownership--Any purchase or acquisition of control of a licensed entity (including acquisition by gift, devise, or descent), or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs. The term does not include a change in proportionate ownership as defined in §83.3004 of this title (relating to Change in Form or Proportionate Ownership). Transfer of ownership includes the following:

(A) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

(B) any purchase or acquisition of control of a licensed general partnership, in which a partner relinquishes that owner's entire interest or a new general partner obtains an ownership interest;

(C) any change in ownership of a licensed limited partnership interest in which:

(i) a limited partner owning 10% or more relinquishes that owner's entire interest;

(ii) a new limited partner obtains an ownership interest of 10% or more;

(iii) a general partner relinquishes that owner's entire interest; or

(iv) a new general partner obtains an ownership interest (transfer of ownership occurs regardless of the percentage of ownership exchanged of the general partner);

(D) any change in ownership of a licensed corporation in which:

(i) a new stockholder obtains 10% or more of the outstanding voting stock in a privately held corporation;

(ii) an existing stockholder owning 10% or more relinquishes that owner's entire interest in a privately held corporation;

(iii) any purchase or acquisition of control of 51% or more of a company that is the parent or controlling stockholder of a licensed privately held corporation occurs; or

(iv) any stock ownership changes that result in a change of control (i.e., 51% or more) for a licensed publicly held corporation occur;

(E) any change in the membership interest of a licensed limited liability company:

(i) in which a new member obtains an ownership interest of 10% or more;

(ii) in which an existing member owning 10% or more relinquishes that member's entire interest; or

(iii) in which a purchase or acquisition of control of 51% or more of any company that is the parent or controlling member of a licensed limited liability company occurs;

(F) any transfer of a substantial portion of the assets of a licensed entity under which a new entity controls business at a licensed location; and

(G) any other purchase or acquisition of control of a licensed entity, or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs.

(4) Transferee--The entity that controls business at a licensed location after a transfer of ownership.

(5) Transferor--The licensed entity that controls business at a licensed location before a transfer of ownership.

(c) License transfer approval. No credit access business license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §393.620. A license transfer is approved when the OCCC issues its final written approval of a license transfer application.

(d) Timing. No later than 30 days after the event of a transfer of ownership, the transferee must file a complete license transfer application or new license application on transfer of ownership in accordance with subsection (e). A transferee may file an application before this date.

(e) Application requirements.

(1) Generally. This subsection describes the application requirements for a license transfer application or a new license application on transfer of ownership. A transferee must submit the application in a format prescribed by the OCCC. The OCCC may accept prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. The transferee must pay appropriate fees in connection with the application.

(2) Documentation of transfer of ownership. The application must include documentation evidencing the transfer of ownership. The documentation should include one or more of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the purchase agreement or other evidence relating to the acquisition of the equity interest of a licensee that has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(3) Application information for new licensee. If the transferee does not hold a credit access business license at the time of the application, then the application must include the information required for new license applications under §83.3002 of this title (relating to Filing of New Application). The instructions in §83.3002 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a credit access business license at the time of the application, then the application must include amendments to the transferee's original license application describing the information that is unique to the transfer event, including disclosure questions, owners and principal parties, and a new financial statement, as provided in §83.3002 of this title. The instructions in §83.3002 of this title apply to these filings. The responsible person at the new location must file a personal affidavit, personal questionnaire, and employment history, if not previously filed. Other information required by §83.3002 of this title need not be filed if the information on file with the OCCC is current and valid.

(5) Request for permission to operate. The application may include a request for permission to operate. The request must be in writing and signed by the transferor and transferee. The request must include all of the following:

(A) a statement by the transferor granting authority to the transferee to operate under the transferor's license while final approval of the application is pending;

(B) an acknowledgement that the transferor and transferee each accept joint and several responsibility to any consumer and to the OCCC for any acts performed under the license while the permission to operate is in effect; and

(C) if the application is a new license application on transfer of ownership, an acknowledgement that the transferor will immediately surrender or inactivate its license if the OCCC approves the application.

(f) Permission to operate. If the application described by subsection (e) includes a request for permission to operate and all required information, and the transferee has paid all fees required for the application, then the OCCC may issue a permission to operate to the transferee. A request for permission to operate may be denied even if the application contains all of the required information. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license. Two companies may not simultaneously operate under a single license. A permission to operate terminates if the OCCC denies an application described by subsection (e).

(g) Transferee's authority to engage in business. If a transferee has filed a complete application including a request for permission to operate as described by subsection (e), by the deadline described by subsection (d), then the transferee may engage in business as a credit access business. However, the transferee must immediately cease doing business if the OCCC denies the request for permission to operate or denies the application.

(h) Responsibility.

(1) Responsibility of transferor. Before the OCCC's final approval of an application described by subsection (e), the transferor is responsible to any consumer and to the OCCC for all credit access business activity performed under the license.

(2) Responsibility of transferee. After a transferee begins performing credit access business activity under a license, the transferee is responsible to any consumer and to the OCCC for all credit access business activity performed under the license. In addition, a transferee is responsible for any transactions that it purchases from the transferor.

(3) Joint and several responsibility. If a transferee begins performing credit access business activity under a license before the OCCC's final approval of an application described by subsection (e) (including activity performed under a permission to operate), then the transferor and transferee are jointly and severally responsible to any consumer and to the OCCC. This responsibility applies to any acts performed under the license after the transferee begins performing credit access business activity and before the OCCC's final approval of the license transfer.

§83.3004. Change in Form or Proportionate Ownership.

(a) (No change.)

(b) Merger. A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a license transfer application or a new license application on transfer of ownership pursuant to §83.3003 of this title (relating to Transfer of License; New License Application on Transfer of Ownership). If the merger of the parent entity of a licensee that leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the commissioner of the change in writing within 10 calendar days after the change, by filing a license amendment and paying the required fees as provided in §83.3010 of this title. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 10 calendar days.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a license transfer application or a new license application on transfer of ownership, but does require notification when the cumulative ownership change to a single entity or individual amounts to 10% or greater. No later than 10 calendar days following the actual change, the licensee is required to notify the commissioner in writing of the change in proportionate ownership by filing a license amendment and paying the required fees as provided in §83.3010 of this title. This section does not apply to a publicly held corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly held parent corporation, although a transfer application may be required under §83.3003 of this title.

(2) A proportionate change in which an owner that previously held under 10% obtains an ownership interest of 10% or more, requires a license transfer application or a new license application on transfer of ownership under §83.3003 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.

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TRD-201505823

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: January 31, 2016
For further information, please call: (512) 936-7621

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DIVISION 5. OPERATIONAL REQUIREMENTS

7 TAC §83.5001

These rule changes are proposed under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G. In addition, the amendments to §83.5001 are proposed under Texas Finance Code, §393.622(a)(2), which authorizes the commission to adopt rules relating to reporting.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

§83.5001. Data Reporting Requirements.

(a) Generally. Each licensee must file the required reports described by this section for the prior period's credit access business activity in a form prescribed by the commissioner and must comply with all instructions relating to submitting the reports. During each calendar year, licensees are required to submit four quarterly reports as provided by Texas Finance Code, §393.627. Additionally, certain quarterly data will be collected by the OCCC on an annual basis under Texas Finance Code, §393.622(a)(1). For purposes of this section, the term "annual report" refers to the quarterly data submitted on an annual basis. All information provided on each quarterly or annual report must be accurate.

(b) - (d) (No change.)

(e) Enforcement actions. The OCCC may take enforcement actions described by this subsection if a licensee violates this section by failing to file a complete and accurate quarterly or annual report by the applicable deadline.

(1) Injunction. As provided by Texas Finance Code, §14.208(a), if the OCCC has reasonable cause to believe that a licensee has violated this section, it may issue an injunction ordering the licensee to file a complete, accurate quarterly or annual report.

(2) Administrative penalty. As provided by Texas Finance Code, §14.251, the OCCC may assess an administrative penalty against a licensee that knowingly or wilfully violates this section.

(A) First violation. If the licensee violates this section and has not violated this section during any of the four quarters preceding the violation, then the administrative penalty is $100 for each licensed location.

(B) Second violation. If the licensee violates this section during any of the four quarters following a first violation described by subparagraph (A), then the administrative penalty is $500 for each licensed location.

(C) Third and subsequent violations. If the licensee violates this section during any of the four quarters following a second violation described by subparagraph (B), then the administrative penalty is $1,000 for each licensed location. The $1,000 administrative penalty applies to subsequent violations that occur during any of the four quar-

ters following a third or subsequent violation described by this subparagraph.

(3) Suspension or revocation for fourth or subsequent violation. If the licensee violates this section during any of the four quarters following a third or subsequent violation described by subsection (e)(2)(C), then the OCCC may suspend or revoke the licensee's license, as provided by Texas Finance Code, §393.614.

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 December 18, 2015.

TRD-201505824
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: January 31, 2016
For further information, please call: (512) 936-7621

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DIVISION 6. CONSUMER DISCLOSURES AND NOTICES

7 TAC §§83.6003, 83.6006 - 83.6008

These rule changes are proposed under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G. The amendments to §83.6005 are proposed under Texas Finance Code, §393.222(b), which authorizes the commission to adopt rules to implement the requirement to provide a notice containing the OCCC's contact information. The amendments to §83.6006, §83.6007, and §83.6008 are proposed under Texas Finance Code, §393.223(c), which authorizes the commission to adopt rules to implement the requirement to provide the consumer cost disclosure.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

§83.6003. Posting of Fee Schedule and Notices.

(a) In-person sales. A credit access business must prominently display the following in the licensee's office in a conspicuous location visible to the general public:

(1) a schedule of all fees to be charged for services performed by the credit access business in connection with deferred presentment transactions and motor vehicle title loans, as applicable;

(2) the following OCCC [~~consumer credit~~] notice: "This business is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the business, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. Email: consumer.complaints@occc.texas.gov." [~~"This business is licensed and examined by the State of Texas - Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems. Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, (800) 538-1579, consumer.complaints@occc.state.tx.us, www.occc.state.tx.us."~~]; and

(3) the notice required by Texas Finance Code, §393.222(a)(3).

(b) Internet sales. For business conducted through the Internet, a credit access business must prominently display the information provided in subsection (a) of this section in a conspicuous location on the business's website and on any website where the business advertises to the public.

(1) Direct link for fee schedule. The posting required by subsection (a)(1) of this section may be accessible via a direct link with the subject matter listed substantially similar to the following: "Fee Schedule" or "Schedule of All Fees."

(2) Direct link for OCCC [~~consumer credit~~] notice. The posting required by subsection (a)(2) of this section may be accessible via a direct link with the subject matter listed substantially similar to the following: "OCCC Notice" or "Consumer Credit Notice." [~~"Consumer Credit Notice," "OCCC Notice," or "Complaints and Inquiries Notice."~~]

§83.6006. Format.

(a) - (b) (No change.)

(c) The consumer disclosure for each product offered under Texas Finance Code, Chapter 393 must be provided to consumers as a separate document. Each product disclosure must fit on one standard-size sheet of paper (8 1/2 by 11 inches), printed on one side [~~both sides, or on two standard sheets of paper printed only on the front sides of each page~~].

§83.6007. Consumer Disclosures.

(a) Consumer disclosure for single payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and [~~or~~] before a financial evaluation occurs in conjunction with a single payment payday loan is presented in the following figure.
Figure: 7 TAC §83.6007(a)

(b) Consumer disclosure for multiple payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and [~~or~~] before a financial evaluation occurs in conjunction with a multiple payment payday loan is presented in the following figure.
Figure: 7 TAC §83.6007(b)

(c) Consumer disclosure for single payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and [~~or~~] before a financial evaluation occurs in conjunction with a single payment auto title loan is presented in the following figure.
Figure: 7 TAC §83.6007(c)

(d) Consumer disclosure for multiple payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and [~~or~~] before a financial evaluation occurs in conjunction with a multiple payment auto title loan is presented in the following figure.
Figure: 7 TAC §83.6007(d)

(e) - (f) (No change.)

§83.6008. Permissible Changes.

(a) A credit access business must use the required disclosures under Texas Finance Code, §393.223 as prescribed by Figures: 7 TAC §83.6007(a) - (d) of this title (relating to Consumer Disclosures), but

may consider making only limited technical changes, as provided by the following exclusive list:

(1) Filling in any dollar amounts, interest rates, or other terms specific to the three to five most common loans for each of the products offered by the credit access business;

(2) Substituting the pronouns used to denote the consumer by substituting words such as "you" and "your" for "I" and "my," along with appropriate grammatical changes;

(3) Adding an optional, dated signature block at the very bottom of the disclosure form, which must include the following statement directly above the signature line of the consumer: "ACKNOWLEDGMENT OF RECEIPT: By signing below, I acknowledge only that I have received a copy of this disclosure prior to signing any contract for a payday or auto title loan, this ___ day of _____, 20__."

(4) Combining the Texas Finance Code, §393.223 disclosure with the federal disclosure regarding military borrowers under 10 U.S.C. §987 and 32 C.F.R. Part 232;

(5) Combining the Texas Finance Code, §393.223 disclosure with the federal disclosure requirements for advertising under the Truth in Lending Act, 15 U.S.C. §1632(a), and Regulation Z, 12 C.F.R. §1026.24; [~~its implementing regulations, 12 C.F.R. §226.24.~~]

(6) a form number indicating the version of the form, the date the form was produced, or both.

(b) A credit access business may make changes other than those specified in subsection (a) only if the OCCC has approved the changes in writing.

(c) [~~(b)~~] The permissible changes allowed by this section must not result in decreasing a font size by more than one point or a chart size by more than 10% from the required disclosure. Permissible changes cannot otherwise interfere with the presentation or layout of the disclosed information.

(d) [~~(c)~~]The comparison information regarding alternative forms of debt required by Texas Finance Code, §393.223(a)(1) and the information regarding the typical pattern of repayment required by Texas Finance Code, §393.223(a)(3) will be periodically updated by the OCCC. Updated consumer disclosures required by §83.6007 of this title will be posted on the OCCC website.

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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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: January 31, 2016
For further information, please call: (512) 936-7621

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CHAPTER 85. PAWNSHOPS AND CRAFTED PRECIOUS METAL DEALERS
SUBCHAPTER B. RULES FOR CRAFTED PRECIOUS METAL DEALERS

The Finance Commission of Texas (commission) proposes amendments to §§85.1001, 85.1009, and 85.2001 in Subchapter B of 7 TAC Chapter 85, concerning the registration and reporting of crafted precious metal dealers.

In general, the purpose of the amendments is to implement changes resulting from the commission's review of Chapter 85, Subchapter B under Texas Government Code, §2001.039. The notice of intention to review 7 TAC Chapter 85, Subchapter B was published in the *Texas Register* on November 13, 2015 (40 TexReg 8035). The agency did not receive any comments on the notice of intention to review.

The proposed amendments are technical in nature, providing clarification and conforming changes in accordance with a revised rule, recent legislation, and updated agency contact information. The individual purposes of the amendments to each section are provided in the following paragraphs.

In §85.1001, concerning Definitions, a technical correction is proposed to clarify the definition of "Local law enforcement." In §85.1001(4)(B)(ii)(II), the word "not" will be inserted before the phrase "in a municipality that maintains a police department." The agency believes that the inclusion of "not" clarifies the original intent of this provision, and that this word had been inadvertently omitted at the time the rule was initially adopted. Section 85.1001(4)(B)(ii)(II) defines local law enforcement to be the local county sheriff of the dealer's permanent registered location, for mail order or Internet sales where a non-resident seller enters a transaction with a dealer located in a municipality without a police department. The amendment's language is based on Texas Occupations Code, §1956.063(b), which provides that required reports must be sent to the chief of police if the transaction occurs in a municipality that maintain a police department, and to the sheriff of the county if the transaction occurs in another location.

In §85.1009, concerning Revocation, an amendment is proposed in subsection (b) to update an internal rule reference to 7 TAC §9.1(a), relating to contested case procedure.

Concurrent with these proposed rule amendments, the commission is adopting amendments to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions; former title: Definitions and Interpretation; Severability) to clarify which rules of procedure apply to a contested case hearing conducted by an administrative law judge contracted by a finance agency, and a which rules apply to a hearing conducted by the State Office of Administrative Hearings. Amended subsection (a) in §9.1 as adopted will read: "This chapter governs contested case hearings conducted by an administrative law judge employed or contracted by an agency. All contested case hearings conducted by the State Office of Administrative Hearings (SOAH) are governed by SOAH's procedural rules found at Title 1, Chapter 155 of the Texas Administrative Code."

Section 85.1009(b) identifies the rules of procedure applicable to a contested case hearing regarding a notice to revoke a crafted precious metal dealer's registration for alleged violations of Texas Occupations Code, Chapter 1956. The proposed amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section §85.2001, concerning Transaction Report Form and Records, contains two proposed amendments regarding recently revised information. The first amendment in subsection

(a)(8) corresponds to 2015 legislation, and the second in subsection (a)(13) provides updated agency contact information.

First, crafted precious metal dealers must accept a Texas handgun license as a valid form of identification for purchases of crafted precious metal as of September 1, 2015. During the most recent legislative session, the Texas Legislature passed HB 2739. This new law added Section 506.001(a) to the Texas Business and Commerce Code stating: "A person may not deny the holder of a concealed handgun license issued under Subchapter H, Chapter 411, Government Code, access to goods, services, or facilities...because the holder has or presents a concealed handgun license rather than a driver's license or other acceptable form of personal identification." This means that dealers must now accept handgun licenses as a valid form of identification, in addition to the other forms of identification listed in Section 1956.062(c) of the Texas Occupations Code. The amendment uses the phrase "handgun license" in accordance with HB 910, the open-carry law passed by the Texas Legislature during the most recent session. HB 910 replaces the phrase "concealed handgun license" with "handgun license" throughout the statutes governing handgun licenses, and it goes into effect on January 1, 2016.

As a result, the proposed amendments to §85.2001(a)(8) add the phrase "or handgun license number" to the list of identification numbers to be recorded on the transaction report form by crafted precious metal dealers.

Second, in accordance with instructions from the Texas Department of Information Resources, the Office of Consumer Credit Commissioner (OCCC) has updated its website and e-mail address with the "texas.gov" extension: occc.texas.gov and consumer.complaints@occc.texas.gov. In order to provide consumers with the best contact information for the agency, this proposal amends §85.2001(a)(13) with the OCCC's updated contact information.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn has also 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 that the commission's rules will comply with state and federal law and will be more easily understood and enforced. Another public benefit of these rule amendments will be increased uniformity and consistency in transaction forms.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro-businesses. There will be no effect on individuals required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register.* At the conclusion of business on the 31st day after the proposal is published in the *Texas Register,* no further written comments will be considered or accepted by the commission.

DIVISION 1. REGISTRATION PROCEDURES

7 TAC §85.1001, §85.1009

The amendments are proposed under Texas Occupations Code, §1956.0611, which authorizes the Finance Commission to adopt rules necessary to implement and enforce Texas Occupations Code, Chapter 1956, Subchapter B, regarding Sale of Crafted Precious Metal to Dealers. Additionally, §1956.063(c) states that for each regulated transaction, dealers must submit a report on a form prescribed by the commissioner.

The statutory provisions affected by the proposed amendments are contained in Texas Occupations Code, Chapter 1956, Subchapter B, concerning Sale of Crafted Precious Metal to Dealers.

§85.1001. Definitions.

The following terms, when used in this subchapter, have the following meanings:

(1) - (4) (No change.)

(4) Local law enforcement.

(A) (No change.)

(B) For mail order or Internet sales, local law enforcement is:

(i) (No change.)

(ii) if the seller does not reside in Texas and the dealer's permanent registered location is in Texas:

(I) (No change.)

(II) the sheriff of the county of the dealer's permanent registered location, if the dealer's permanent registered location is not in a municipality that maintains a police department.

(5) - (10) (No change.)

§85.1009. Revocation.

(a) (No change.)

(b) Upon receiving notice of revocation under this section, an affected person may request a hearing before the OCCC. The hearing will be conducted under the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions).[, as provided in Texas Government Code, Chapter 2001, and Part 1, Chapter 9, Subchapter B of this title (relating to Contested Case Hearings).]

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 December 18, 2015.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7621

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DIVISION 2. OPERATIONAL REQUIREMENTS

7 TAC §85.2001

The amendments are proposed under Texas Occupations Code, §1956.0611, which authorizes the Finance Commission to adopt rules necessary to implement and enforce Texas Occupations Code, Chapter 1956, Subchapter B, regarding Sale of Crafted Precious Metal to Dealers. Additionally, §1956.063(c) states that for each regulated transaction, dealers must submit a report on a form prescribed by the commissioner.

The statutory provisions affected by the proposed amendments are contained in Texas Occupations Code, Chapter 1956, Subchapter B, concerning Sale of Crafted Precious Metal to Dealers.

§85.2001. Transaction Report Form and Records.

(a) Required elements. For each transaction in which a dealer purchases crafted precious metal, the dealer must prepare a transaction report form. The report form must be preprinted and prenumbered and must contain the following required elements:

(1) - (7) (No change.)

(8) the seller's driver's license number, [~~or~~] personal identification certificate number, or handgun license number;

(9) - (12) (No change.)

(13) the following notice: "This business is registered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against this business may contact the Office of Consumer Credit Commissioner through one of the means indicated below: In Person or U.S. Mail: 2601 North Lamar Boulevard, Austin, Texas 78705-4207. Telephone No.: (800) 538-1579. Fax No.: (512) 936-7610. E-mail: consumer.complaints@occc.texas.gov. [~~consumer.complaints@occe.state.tx.us.~~] Website: occc.texas.gov. [~~www.occc.state.tx.us.~~]"

(b) - (c) (No change.)

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-201505831
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7621

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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 §1.23

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 1, §1.23, concerning the State of Texas Low Income Housing Plan and Annual Report ("SLIHP"). The purpose of the proposed amendment is to adopt by reference the 2016 SLIHP.

PURPOSE. The purpose of the SLIHP is to serve as a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. The document reviews the Department's programs, current and future policies, and resource allocation plan to meet state housing needs, and reports on State Fiscal Year 2015 performance. The Department is required to submit the SLIHP annually to its Board of Directors in accordance with Texas Government Code §2306.072.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of the amendment will be improved communication with the public regarding the Department's programs and activities. There will not be any economic cost to any individuals required to comply with the amendment. The amendment will not impact local employment.

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 Friday, January 1, 2016, through Thursday, January 21, 2016, to receive input on the amendment. Written comments may be submitted to Texas Department of Housing and Community Affairs, Elizabeth Yevich, P.O. Box 13941, Austin, Texas 78711-3941, by email to info@tdhca.state.tx.us, or by fax to (512) 475-0070. ALL COMMENTS MUST BE RECEIVED BY 6:00 P.M. AUSTIN LOCAL TIME ON JANUARY 21, 2016.

The full text of the draft 2016 SLIHP may be viewed at the Department's website: www.tdhca.state.tx.us. The public may also receive a copy of the draft 2016 SLIHP by contacting the Department's Housing Resource Center at (512) 475-3976.

STATUTORY AUTHORITY: The amendment is proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the amendment is proposed pursuant to §2306.0723 which specifically authorizes the Department to consider the SLIHP as a rule.

The proposed amendment affects no other code, article or statute.

§1.23. State of Texas Low Income Housing Plan and Annual Report (SLIHP).

The Texas Department of Housing and Community Affairs (the "Department") adopts by reference the 2016 [~~2015~~] State of Texas Low Income Housing Plan and Annual Report (SLIHP). The full text of the 2016 [~~2015~~] SLIHP may be viewed at the Department's website: www.tdhca.state.tx.us. The public may also receive a copy of the 2016 [~~2015~~] SLIHP by contacting the Department's Housing Resource Center at (512) 475-3976.

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 December 17, 2015.

TRD-201505702
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: January 31, 2016
For further information, please call: (512) 936-7803

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CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER F. COMPLIANCE MONITORING

10 TAC §10.610, §10.614

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 §10.614, concerning Utility Allowances. This repeal is being proposed concurrently with the proposal of new §10.610, concerning Written Policies and Procedures, and §10.614, concerning Utility Allowances, which will improve compliance with new requirements related to the HOME program concerning utility allowances and federal Fair Housing requirements.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeals are in effect, enforcing or administering the repeals 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 repeals are in effect, there will be no change in the public benefit anticipated as a result of the repeals. There will be no economic impact to any individuals required to comply with the repeals.

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 January 1, 2016, through February 1, 2016, 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) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. FEBRUARY 1, 2016.

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

The proposed repeals affect no other code, article, or statute.

§10.610. Tenant Selection Criteria.

§10.614. Utility Allowances.

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 December 18, 2015.

TRD-201505822
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: January 31, 2016
For further information, please call: (512) 475-2330

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10 TAC §10.610, §10.614

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Subchapter F, §10.610, concerning Written Policies and Procedures; and §10.614, concerning Utility Allowances.

10 TAC §10.610, concerning Written Policies and Procedures. The Board approved a new §10.610 concerning Tenant Selection Criteria at the meeting of December 2014. The purpose of the new section was to clarify and improve compliance requirements with federal Fair Housing laws. Now that the rule has been in effect for a year, the Department has received feedback that the way that the rule is currently structured could be improved. Through monitoring, the Department has noted difficulty in complying with the rule and, to better explain the expectations, the rule has been restructured. The rule is also being renamed to more accurately describe the requirements.

10 TAC §10.614, concerning Utility Allowance. The HOME Final Rule, 24 CFR Part 92, was updated in August of 2013. The rule introduced a new requirement for the Department, as the Participating Jurisdiction, to determine a development's utility allowance using the HUD Utility Model Schedule. The Utility Allowance rule is being updated to codify this requirement and describe the process by which the Department will calculate the utility allowance annually. Further, the Department has identified a need for more detail in the rule to provide better guidance on how to properly calculate a utility allowance for all Department administered multifamily programs.

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. There will not be any increased economic cost to any individuals required to comply with the new sections.

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 January 1, 2016, through February 1, 2016, to receive input on the proposed new sections. 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) 475-3359.

ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. FEBRUARY 1, 2016.

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. Written Policies and Procedures.

(a) The purpose of this section is to outline policies and/or procedures that are required to have written documentation.

(1) Owners must inform applicants/tenants in writing, at the time of application or other action described in this section, that such policies/procedures are available, and that the Owner will provide copies upon request to applicants/tenants or their representatives.

(2) The Owner must have all policies and related documentation required by this section available in the leasing office or wherever applications are taken.

(3) All policies must have an effective date. Any changes require a new effective date.

(4) In general, policies cannot be applied retroactively. Tenants who already reside in the development or applicants on the waitlist at the time new or revised tenant selection criteria are applied and who are otherwise in good standing under the lease or waitlist, must not receive notices of termination or non-renewal based solely on their failure to meet the new or revised tenant selection criteria or be passed over on the waitlist. However, criteria related to program eligibility may be applied retroactively when a market development receives a new award of tax credits, federal or state funds and a household is not eligible under the new program requirements, or when prior criteria violate federal or state law.

(b) Tenant Selection Criteria. Owners must maintain written Tenant Selection Criteria. The criteria under which an applicant was screened must be included in the household's file.

(1) The criteria must include:

(A) Requirements that determine an applicant's basic eligibility for the property, including any preferences, restrictions, and any other tenancy requirements. The tenant selection criteria must specifically list:

(i) The income and rent limits;

(ii) When applicable, restrictions on student occupancy and any exceptions to those restrictions; and,

(iii) Fees and/or deposits required as part of the application process.

(B) Applicant screening criteria, including what is screened and what scores or findings would result in ineligibility.

(i) The screening criteria must 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.

(ii) Applicants must be provided the names of any third party screening companies upon request.

(C) Occupancy Standards. If fewer than 2 persons (over the age of 6) per bedroom for each rental unit are required for reasons other than those directed by local building code or safety regulations, a written justification must be provided.

(D) The following statements:

(i) 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. Chapter 1, Subchapter B of this title provides more detail about reasonable accommodations.

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

(iii) Specific animal, breed, number, weight restrictions, pet rules, and pet deposits will not apply to households having a qualified service/assistance animal(s).

(E) Notice to applicants and current residents about Violence Against Women Reauthorization Act of 2013 ("VAWA") protections.

(F) Specific age requirements if the Development is operating as Housing for Older Persons under the Housing for Older Persons Act of 1995 as amended (HOPA), or as required by federal funds to have an Elderly Preference, and in accordance with a LURA.

(2) The criteria must not:

(A) Include preferences for admission, unless such preference is:

(i) Allowed for under program rules; or,

(ii) The property receives Federal assistance and has received written approval from HUD, USDA, or VA for such preference.

(B) Exclude an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance program. The minimum income standard for households participating in a voucher program is limited to a monthly income of 2.5 times the household's share of the total monthly rent amount. However, if a household's share of the rent is $50 or less, Owners may require a minimum annual income of $2,500; or,

(C) In accordance with VAWA, deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(c) Reasonable Accommodations policy. Owners must maintain a written Reasonable Accommodations policy. The policy must be maintained at the Development. Owners are responsible for ensuring that their employees and contracted third party management companies are aware of and comply with the reasonable accommodation policy.

(1) The policy must provide:

(A) Information on how an applicant or current resident with a disability may request a reasonable accommodation; and,

(B) A timeframe in which the Owner will respond to a request.

(2) The policy must not:

(A) Require a household to make a reasonable accommodation request in writing;

(B) 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 program;

(C) Exclude a household with person(s) with disabilities from admission to the Development because an accessible unit is not currently available; or,

(D) Require a household to rent a unit that has already been made accessible.

(d) Waitlist policy. Owners must maintain a written waitlist policy, regardless of current unit availability. The policy must be maintained at the Development.

(1) The policy must include procedures the Development uses in:

(A) Opening, closing, and selecting applicants from the waitlist;

(B) How preferences are applied; and,

(C) Procedures for prioritizing applicants needing accessible units in accordance with 24 CFR 8.27 and Chapter 1, Subchapter B of this title.

(2) Developments with additional rent and occupancy restrictions must maintain a waiting list for their lower rent restricted units. Unless otherwise approved at application, underwriting and cost certification, all unit sizes must be available at the lower rent limits. The waitlist policy for Developments with lower rent restricted units must address how the waiting list for their lower rent restricted units will be managed. The policy must not give a preference to prospective applicants over existing households. However, a Development may, but is not required to, prioritize existing households over prospective applicants.

(e) Denied Application policies. Owners must maintain a written policy regarding procedures for denying applications.

(1) The policy must address the manner by which rejections of applications will be handled, including timeframes and appeal procedures, if any.

(2) Within seven (7) days after the determination is made to deny an application, the owner must provide any rejected or ineligible applicant that completed the application process a written notification of the grounds for rejection. The written notification must include:

(A) The specific reason for the denial and reference the specific leasing criteria upon which the denial is based; and,

(B) Contact information for any third parties that provided the information on which the rejection was based and information on the appeals process, if one is used by the property.

(3) The Development must keep a log of all denied applicants that completed the application process to include:

(A) Basic household demographic and rental assistance information, if requested during any part of the application process;

(B) The specific reason for which an applicant was denied, the date the decision was made; and,

(C) The date the denial notice was mailed or hand-delivered to the applicant.

(4) A file of all rejected applications must be maintained the length of time specified in the applicable program's recordkeeping requirements and include:

(A) A copy of the written notice of denial; and,

(B) The Tenant Selection Criteria policy under which an applicant was screened.

(f) Non-renewal and/or Termination Notices. Owners must maintain a written policy regarding procedures for providing households non-renewal and termination notices.

(1) The owner must provide in any non-renewal or termination notice, a specific reason for the termination or non-renewal.

(2) The notification must:

(A) Be delivered as required under applicable program rules;

(B) Include information on rights under VAWA;

(C) State how a person with a disability may request a reasonable accommodation in relation to such notice; and,

(D) Include information on the appeals process if one is used by the property.

(g) Unit transfer policies. Owners must maintain a written policy regarding procedures for households to request a unit transfer. The policy must address the following:

(1) How security deposits will be handled for both the current unit and the new unit;

(2) How transfers related to a reasonable accommodation will be addressed; and,

(3) For HTC Developments, how transfers will be handled with regard to the multiple building project election on IRS Form(s) 8609 line 8(b) and accompanying statements in accordance with §10.616 of this subchapter, concerning Household Unit Transfer Requirements for All Programs.

§10.614. Utility Allowances.

(a) Purpose. The purpose of this section is to provide the guidelines for calculating a utility allowance under the Department's multifamily programs. The Department will cite noncompliance and/or not approve a utility allowance if it is not calculated in accordance with this section. Owners are expected to comply with the provisions of this section, as well as, any existing federal or state program guidance.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Building Type. The HUD Office of Public and Indian Housing ("PIH") characterizes building and unit configurations for HUD programs. The Department will defer to the guidance provided by HUD found at: http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11608.pdf (or successor Uniform Resource Locator ("URL")) when making determinations regarding the appropriate building type(s) at a Development.

(2) Power to Choose. The Public Utility Commission of Texas database of retail electric providers in the areas of the state where the sale of electricity is open to retail competition http://www.powertochoose.org/ (or successor URL). In areas of the state where electric service is deregulated, the Department will verify the availability of residential service. If the utility company is not listed as a provider of residential service in the Development's ZIP code for an area that is deregulated, the request will not be approved.

(3) Component Charges. The actual cost associated with the billing of a residential utility. Each Utility Provider may publish

specific utility service information in varying formats depending on the service area. Such costs include, but are not limited to:

(A) Rate(s). The cost for the actual unit of measure for the utility (e.g. cost per kilowatt hour for electricity);

(B) Fees. The cost associated with a residential utility that is incurred regardless of the amount of the utility the household consumes (e.g. Customer Charge); and,

(C) Taxes. Taxes for electricity and gas are regulated by the Texas Comptroller of Public Accountants and can be found http://comptroller.texas.gov/ (or successor URL). Local Utility Providers have control of the tax structure related to water, sewer and trash. To identify if taxes are imposed for these utilities, obtain records directly from the Utility Provider.

(5) Utility Allowance. An estimate of the expected monthly cost of any utility for which a resident is financially responsible, other than telephone, cable television, or internet:

(A) For HTC, TCAP (including TCAP RF), and Exchange buildings, include:

(i) Utilities paid by the resident directly to the Utility Provider; and,

(ii) Utilities paid by the resident directly to the Owner of the building or to a third party billing company if the bill is based on their actual consumption of the utility and not an allocation method or Ratio Utility Billing System ("RUBS").

(B) For HOME, Bond, HTF, and NSP Developments, unless otherwise prescribed in the program's Regulatory Agreement, include all utilities regardless of how they are paid.

(6) Utility Provider. The company that provides residential utility service (e.g. electric, gas, water, waste water, and/or trash) to the buildings.

(c) Methods. The following options are available to establish a utility allowance for all programs except Developments funded with HOME and NSP funds.

(1) 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.

(2) HUD-Regulated buildings layered with any Department program. If neither the building nor any tenant in the building receives 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. Unless further guidance is received from the U.S. Department of Treasury or the Internal Revenue Service ("IRS"), the Department considers Developments awarded HOME funds by the Department to be HUD-Regulated buildings.

(3) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the methods described in subparagraphs (A) - (E) of this paragraph:

(A) Public Housing Authority ("PHA"). The utility allowance established by the applicable PHA for the 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.

(i) If the PHA publishes different schedules based on Building Type, the Owner is responsible for implementing the correct schedule based on the Development's Building Type(s). Example: 614(1): The applicable PHA publishes a separate utility allowance schedule for Apartments (5+ units), one for Duplex/Townhomes and another for Single Family Homes. The Development 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.

(ii) In the event the PHA publishes a utility allowance schedule specifically for energy efficient units, and the Owner desires to use such a schedule, the Owner must demonstrate that the building(s) meet the housing authority's specifications for energy efficiency once every five (5) years.

(iii) If the applicable PHA allowance lists flat fees for any utility, those flat fees must be included in the calculation of the utility allowance if the resident is responsible for that utility.

(iv) If the individual components of a utility allowance are not in whole number format, the correct way to calculate the total allowance is to add each amount and then round the total up to the next whole dollar. Example: 614(2): Electric cooking is $8.63, Electric Heating is $5.27, Other Electric is $24.39, Water and Sewer is $15. The utility allowance in this example is $54.00.

(v) If an Owner chooses to implement a methodology as described in subparagraph (B), (C), (D), or (E) of this paragraph, for Units occupied by Section 8 voucher holders, the utility allowance remains the applicable PHA utility allowance established by the PHA from which the household's voucher is received.

(vi) In general, if the Development is located in an area that does not have a municipal, county, or regional housing authority that publishes a utility allowance schedule for the Section 8 Existing Housing Program, Owners must select an alternative methodology. In the event the Development 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.

(B) Written Local Estimate. The estimate must come from the local Utility Provider, be signed by the Utility Provider representative, and specifically include all Component Charges for providing the utility service.

(C) HUD Utility Schedule Model. The HUD Utility Schedule Model and related resources can be found at http://www.huduser.gov/portal/resources/utilallowance.html (or successor URL). Each item on the schedule must be displayed out two decimal places. The total allowance must be rounded up to the next whole dollar amount. The Component Charges used can be no older than those in effect sixty (60) days prior to the beginning of the ninety (90) day period described in subsection (e) of this section.

(i) The allowance must be calculated using the MS Excel version available at http://www.huduser.org/portal/resources/utilmodel.html (or successor URL), as updated from time to time, with no changes or adjustments made other than entry of the required information needed to complete the model.

(ii) In the event that the PHA code for the local PHA to the Development is not listed in "Location" tab of the workbook, the Department will use the PHA code for the PHA that is closest in distance to the Development using online mapping tools (e.g. MapQuest).

(iii) Green Discount. If the Owner elects any of the Green Discount options for a Development, documentation to evidence that the units and the buildings meet the Green Discount standard as prescribed in the model is required for the initial approval and every subsequent annual review. In the event the allowance is being calculated for an application of Department funding (e.g. 9% Housing Tax Credits), upon request, the Department will provide both the Green Discount and the non-Green Discount results for application purposes; however, to utilize the Green Discount allowance for leasing activities, the Owner must evidence that the units and buildings have met the Green Discount elected when the request is submitted as required in subsection (k) of this section.

(iv) Do not take into consideration any costs (e.g. penalty) or credits that a consumer would incur because of their actual usage. Example: 614(3) The Electric Fact Label for ABC Electric Utility Provider provides a Credit Line of $40 per billing cycle that is applied to the bill when the usage is greater than 999 kWh and less that 2000 kWh. Example: 614(4) A monthly minimum usage fee of $9.95 is applied when the usage is less than 1000 kWh in the billing cycle. When calculating the allowance, disregard these types costs or credits.

(D) Energy Consumption Model. The model 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 type and 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 Component Charges used must be no older than in effect sixty (60) days prior to the beginning of the ninety (90) day period described in subsection (e) of this section. 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; and,

(E) An allowance based upon an average of the actual use of similarly constructed and sized Units in the building using actual utility usage data and Component Charges, provided that the Development Owner has the written permission of the Department. This methodology is referred to as the "Actual Use Method." For a Development Owner to use the Actual Use Method they must:

(i) Provide a minimum sample size of usage data for at least 5 Continuously Occupied Units of each Unit Type or 20 percent of each Unit Type whichever is greater. Example: 614(5): 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;

(ii) Upload the information in subclauses (I) - (IV) of this clause to the Development's CMTS account 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 described in subsection (e) of this section. Example: 614(6): The Utility Provider releases the information regarding electric usage at Westover Townhomes on February 5, 2015. The data provided is from February 1, 2015, through January 31, 2015. The Owner must submit the information to the Department no later than March 31, 2015, for the information to be valid;

(I) An Excel spreadsheet listing each Unit for which data was obtained to meet the minimum sample size requirement of a Unit Type, the number of bedrooms, bathrooms and square footage for each Unit, the household's move-in date, the utility usage (e.g. actual kilowatt usage for electricity) for each month of the twelve (12) month period for each Unit for which data was obtained, and the Component Charges in place at the time of the submission;

(II) All documentation obtained from the Utility Provider (or billing entity for the utility provider) and/or copies of actual utility bills gathered from the residents, including all usage data not needed to meet the minimum sample size requirement and any written correspondence from the utility provider;

(III) The rent roll showing occupancy as of the end of the month for the month in which the data was requested from the utility provider; and

(IV) Documentation of the current utility allowance used by the Development.

(iii) Upon receipt of the required information, the Department will determine if the Development Owner has provided the minimum information necessary to calculate an allowance using the Actual Use Method. If so, the Department shall calculate the utility allowance for each bedroom size using the guidelines described in subclauses (I) - (V) of this clause;

(I) If data is obtained for more than the sample requirement for the Unit Type, all data will be used to calculate the allowance;

(II) If more than twelve (12) months of data is provided for any Unit, only the data for the most current twelve (12) months will be averaged;

(III) The allowance will be calculated by multiplying the average units of measure for the applicable utility (i.e., kilowatts over the last 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;

(IV) The allowance will be rounded up to the next whole dollar amount. If allowances are calculated for different utilities, each utility's allowance will be rounded up to the next whole dollar amount and then added together for the total allowance; and

(V) If the data submitted indicates zero usage for any month, the data for that Unit will not be used to calculate the Utility Allowance.

(iv) The Department will complete its evaluation and calculation within forty-five (45) days of receipt of all the information requested in clause (ii) of this subparagraph.

(d) Acceptable Documentation. For the Methods where utility specific information is required to calculate the allowance (e.g. base charges, cost per unit of measure, taxes, etc.) Owners should obtain documentation directly from the Utility Provider and/or Regulating

State Agency. Any Component Charges related to the utility that are published by the Utility Provider and/or Regulating State Agency must be included. In the case where a utility is billed to the Owner of the building(s) and the Owner is disbursing the bill to the tenant through a third party billing company, the Component Charges published by the Utility Provider and not the third party billing company will be used.

(e) Changes in the Utility Allowance. An Owner may not change utility allowance methods, start or stop charging residents for a utility without prior written approval from the Department. Example: 614(7): 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.

(1) The Department will review all request, with the exception of the methodology prescribed in subsection (c)(3)(E) (concerning the Actual Use Method), within 90 days of the receipt of the request. For a review involving a utility allowance for an application from funding from the Department, the request will not be reviewed until the program area notifies the compliance division that the application is being considered for funding.

(2) If the Owner fails to post the notice to the residents and simultaneously submit the request to the Department by the beginning of the 90 day period, the Department's approval or denial will be delayed for up to 90 days after Department notification. Example: 614(8): 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.

(3) Effective dates. If the Owner uses the methodologies as described in subsection (c)(1), (2) or (3)(A) 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 (c)(3)(B) - (E) 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. Nothing in this section prohibits an Owner from reducing a resident's rent prior to the end of the 90 day period when the proposed allowance would result in a gross rent issue.
Figure: 10 TAC §10.614(e)(3)

(f) Requirements for Annual Review.

(1) RHS and HUD-Regulated Buildings. Owners must demonstrate that the utility allowance has been reviewed 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) Written Local Estimate, HUD Utility Model Schedule and Energy Consumption Model. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than October 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review. At the same time the request is submitted to the Department, the Owner must post, at the Development, the utility allowance estimate in a common area of the leasing office where such notice is unobstructed and visible in plain sight. The Department will review the request for compliance with all applicable requirements and reasonableness. If, in comparison to other approved utility allowances for properties of similar size, construction and population in the same geographic area, the allowance does not appear reasonable or appears understated, the Department may require additional support and/or deny the request.

(4) Actual Use Method. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than August 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review.

(g) Unless conflicting guidance is received from HUD, in accordance with 24 CFR §92.252, for HOME and NSP funds for which the Department is the participating jurisdiction, the utility allowance will be established in the following manner:

(1) By April 30th, the Department will calculate the utility allowance for each HOME and NSP Development using HUD Utility Schedule Model. For property specific data, the Department will use:

(A) The information submitted in the Annual Owner's Compliance Report;

(B) Entrance Interview Questionnaires submitted with prior onsite reviews; or,

(C) The owner may be contacted and asked to complete the Utility Allowance Questionnaire. In such case, a five (5) day period will be provided to return the completed questionnaire.

(2) Utilities will be evaluated in the following manner:

(A) For regulated utilities, the Department will contact the Utility Provider directly and apply the Component Charges in effect no later than 60 days before the allowance will be effective.

(B) For deregulated utilities:

(i) The Department will use the Power to Choose website and search available Utility Providers by zip code;

(ii) The plan chosen will be the median cost per kWh based on average price per kWh for the average monthly use of 1000 kWh of all available plans; and,

(iii) The actual Component Charges from the plan chosen in effect no later than 60 days before the allowance will be effective will be inputted into the Model.

(3) The Department will notify the Owner contact in CMTS of the new allowance and provide the backup for how the allowance was calculated. The owner will be provided a five (5) day period to review the Department's calculation and note any errors. Only errors related to the physical characteristics of the building(s) and utilities paid by the tenants will be reconsidered; the utility plan and Utility Provider selected by the Department and Component Charges used in calculating the allowance will not be changed. During this five (5) day period, the owner also has the opportunity to submit documentation and request use of any of the available Green Discounts.

(4) Once approved, the allowance must be implemented for rent due in all program units thirty (30) days after written approval from the Department is received.

(5) Unless further guidance is received from Treasury or the IRS, HTC Buildings in which there are HOME or NSP units must use the HUD Model Schedule for all rent restricted units (with the exception of unit occupied by households that received rental assistance in which case the allowance is established by the program from where the household receives the assistance).

(h) For owners participating in the Department's Section 811 Project Rental Assistance ("PRA") Program, the utility allowance is the allowance established in accordance with this section related to the other multifamily program(s) at the Development. Example: 614(9) ABC Apartments is an existing HTC Development now participating in the PRA Program. The residents pay for electricity and the Owner is using the PHA method to calculate the utility allowance for the HTC Program. The appropriate utility allowance for the PRA Program is the PHA method.

(i) Combining Methods. With the exception of HUD regulated buildings 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.

(j) The Owner shall maintain and make available for inspection by the tenant all documentation, including, but not limited to, the data, underlying assumptions and methodology that was used to calculate the allowance. Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling Unit of the tenant at the convenience of both the Owner and tenant.

(k) 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, the Owner must submit utility allowance documentation for Department approval, at minimum, 90 days prior to the commencement of leasing activities. This subsection does not preclude an Owner from changing to one of these methods after commencement of leasing.

(l) 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.

(m) All requests described in this subsection must be complete and uploaded directly to the Development's CMTS account using the "Utility Allowance Documents" in the type field. The Department will not be able to approve requests that are incomplete and/or are not submitted correctly.

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 December 18, 2015.

TRD-201505825

Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: January 31, 2016
For further information, please call: (512) 475-2330

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10 TAC §10.620

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 10, Subchapter F, §10.620, concerning Monitoring for Non-Profit Participation or HUB Participation. The HOME Final Rule, 24 CFR Part 92, now requires the Department, as the Participating Jurisdiction, to monitor throughout the federal affordability period, to ensure that HOME Developments awarded funds from the Community Housing and Development Organization set aside on or after August 23, 2013, meet specific requirements. The rule is being amended to reflect that requirement.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amended section is in effect, enforcing or administering the amended section 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 amended section is in effect, the public benefit anticipated as a result of the amended section 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 January 1, 2016, through February 1, 2016, 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) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. FEBRUARY 1, 2016.

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.

§10.620. Monitoring for Non-Profit Participation, [~~or~~] HUB, or CHDO Participation.

(a) If a Development's LURA requires the material participation of a non-profit or Historically Underutilized Business (HUB), the Department will confirm whether this requirement is being met throughout the development phase and ongoing operations of the Development. Owners are required to maintain sufficient documentation to evidence that a non-profit or HUB so participating is in good standing with the Texas Comptroller of Public Accounts, Texas Secretary of State and/or IRS as applicable and that it is actually materially participating in a manner that meets the requirements of the IRS. Documentation may be reviewed during onsite visits or must be submitted to the Department upon request.

(b) If the HOME funds were awarded from the Community Housing and Development Organization ("CHDO") set aside on or after August 23, 2013, the Department will monitor that the Development remains controlled by a CHDO throughout the federal affordability period.

(c) [~~(b)~~] If an Owner wishes to change the participating non-profit, [~~or~~] HUB, or CHDO prior written approval from the Department is necessary. In addition, the IRS will be notified if the non-profit is not materially participating on a HTC Development during the Compliance Period.

(d) [~~(c)~~] The Department does not enforce partnership agreements or other agreements between third parties or determine fund distributions of partnerships. These disputes are matters for a court of competent jurisdiction or other agreed resolution among the parties.

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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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-2330

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 115. MIDWIVES

16 TAC §§115.1 - 115.7, 115.13 - 115.16, 115.20, 115.21, 115.23, 115.25, 115.70, 115.75, 115.80, 115.90, 115.100, 115.111 - 115.123, 115.125

The Texas Department of Licensing and Regulation (Department) proposes new rules at 16 Texas Administrative Code (TAC) Chapter 115, §§115.1, 115.2, 115.3, 115.4, 115.5, 115.6, 115.7, 115.13, 115.14, 115.15, 115.16, 115.20, 115.21, 115.23, 115.25, 115.70, 115.75, 115.80, 115.90, 115.100, 115.111, 115.112, 115.113, 115.114, 115.115, 115.116, 115.117, 115.118, 115.119, 115.120, 115.121, 115.122, 115.123 and 115.125, regarding the Midwives program.

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which, in part, transferred 13 occupational licensing programs in two phases from the Department of State Health Services (DSHS) to the Texas Commission of Licensing and Regulation (Commission) and the Department. Under Phase 1, the following seven programs are being transferred from DSHS to the Commission and the Department: (1) Midwives, Texas Occupations Code, Chapter 203; (2) Speech-Language Pathologists and Audiologists, Chapter 401; (3) Hearing Instrument Fitters and Dispensers, Chapter 402; (4) Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists, Chapter 403; (5) Athletic Trainers, Chapter 451; (6) Orthotists and Prosthetists, Chapter 605; and (7) Dietitians, Chapter 701. The statutory amendments transferring regulation of these seven Phase 1 programs from DSHS to the Commission and the Department took effect on September 1, 2015.

The Texas Legislature also enacted Senate Bill 219 (S.B. 219), 84th Legislature, Regular Session (2015), which, in part, amended the enabling acts of the health-related programs regulated by DSHS before those programs were transferred by S.B. 202. S.B. 219 was effective April 2, 2015.

The new rules are proposed to enable the Commission and the Department to regulate the seven Phase 1 programs listed above. The proposed new rules provide for the Department to perform the various functions, including licensing, compliance, and enforcement, necessary to regulate these transferred programs. At the time of adoption, the Commission will designate the effective date of the new rules. The effective date will coincide with the completion of the transfer of the programs to the Commission and Department. The Commission will provide sufficient notice to the regulated community in order for it to comply with the new rules.

The proposed new rules under 16 TAC Chapter 115 are necessary to implement S.B. 202 and to regulate the Midwives program under the authority of the Commission and the Department. The rules also incorporate the changes made by S.B. 219 as applicable. These proposed new rules are separate from and are not to be confused with the DSHS rules located at 22 TAC Chapter 831, regarding the Midwifery program, which are still in effect.

The Midwives Advisory Board was scheduled to meet on November 13, 2015, to consider a draft of these rules. Although the board lacked a quorum, the members present discussed a draft of these proposed rules with the Department before they were published in the *Texas Register* for public comment.

The non-quorum of Midwives Advisory Board members which reviewed the draft rules on November 13, 2015 recommended that §115.114(b) on prenatal care not include mandatory referral on initial or subsequent assessment for: "(9) prior cesarean section (except for prior classical or vertical incision, which will require transfer in accordance with subsection (c)(8) of this section)", "(10) multiple gestation", and "(11) history of prior antepartum or neonatal death". Their recommendations are considered and these numbered provisions are considered for deletion after publication. For purposes of review, these provisions have been included in the published draft to solicit input from the public.

Proposed new §115.1 creates the definitions to be used in this chapter.

Proposed new §115.2 determines when a midwives license is required.

Proposed new §115.3 creates the duties of the Midwives Advisory Board.

Proposed new §115.4. establishes the composition of the Midwives Advisory Board.

Proposed new §115.5 establishes the terms and vacancies for Midwives Advisory Board members.

Proposed new §115.6 creates a presiding officer and their role on the Midwives Advisory Board.

Proposed new §115.7 provides guidelines on when advisory board meetings are held.

Proposed new §115.13 details the initial application requirements for those seeking licensure.

Proposed new §115.14 establishes license renewal requirements.

Proposed new §115.15 explains the late renewal of a license process.

Proposed new §115.16 creates the terms for retired midwives who are performing charity work seeking to renew their license.

Proposed new §115.20 details basic midwifery education.

Proposed new §115.21 provides for education course approval.

Proposed new §115.23 establishes the jurisprudence examination.

Proposed new §115.25 specifies continuing education requirements for licensees.

Proposed new §115.70 creates the standards of conduct for midwives.

Proposed new §115.75 determines when a license must be surrendered.

Proposed new §115.80 establishes fees to be used in the midwives program.

Proposed new §115.90 develops a state roster of licensed midwives to be maintained by the Department.

Proposed new §115.100 creates standards for practicing midwifery in Texas.

Proposed new §115.111 details inter-professional care of women within the midwifery model of care.

Proposed new §115.112 explains when a midwife-client relationship may be terminated and the process.

Proposed new §115.113 creates standards for transfer of care in emergency situations.

Proposed new §115.114 details prenatal care.

Proposed new §115.115 establishes the midwives duties in the labor and delivery process.

Proposed new §115.116 provides guidelines for postpartum care.

Proposed new §115.117 details the requirements of newborn care during the first six weeks after birth.

Proposed new §115.118 establishes the process when administration of oxygen may be needed.

Proposed new §115.119 explains eye prophylaxis.

Proposed new §115.120 creates the screening of newborns procedure.

Proposed new §115.121 requires the informed choice and disclosure statement.

Proposed new §115.122 allows the Department to obtain complaint information without the consent of the midwife's client in order to conduct an investigation.

Proposed new §115.123 allows for administrative penalties and sanctions.

Proposed new §115.125 provides the enforcement authority.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed new rules are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed new rules. There is no estimated increase or decrease in revenue to the state as a result of enforcing or administering the proposed new rules. Historically, the funds used to administer the midwives program was appropriated to DSHS; now those same funds will be appropriated to the Department.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed new rules are in effect, the public benefit will include that the rules implement the statutory requirements under the authority of the Commission and the Department and provide details that are not found in the enabling acts. The rules also have been formatted and organized to assist the public, the regulated community, and the Department in easily finding specific rules. In addition, the new rules are streamlined so as not to duplicate provisions that are already located in the statutes and rules of the Commission and Department in the Texas Occupations Code and in 16 TAC Chapter 60, which apply to all programs regulated by the Commission and the Department.

There will be no anticipated economic effect on small and micro-businesses or to persons who are required to comply with the rules as proposed.

Since the agency has determined that the proposed new rules will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032; or electronically to *erule.comments@tdlr.texas.gov.* The deadline for comments is 30 days after publication in the *Texas Register.*

The new rules are proposed under Texas Occupations Code, Chapters 51 and 203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 203. No other statutes, articles, or codes are affected by the proposal.

§115.1. Definitions.

The following words and terms when used in this chapter shall have the following meaning unless the context clearly indicates otherwise.

(1) Act--The Texas Midwifery Act, Texas Occupations Code, Chapter 203.

(2) Appropriate health care facility--The Department of State Health Services, a local health department, a public health district, a local health unit or a physician's office where specified tests can be administered and read, and where other medical/clinical procedures normally take place.

(3) Approved midwifery education courses--The basic midwifery education courses approved by the department.

(4) Code--Texas Health and Safety Code.

(5) Health authority--A physician who administers state and local laws regulating public health under the Health and Safety Code, Chapter 121, Subchapter B.

(6) Local health unit--A division of a municipality or county government that provides limited public health services as provided by the Health and Safety Code, §121.004.

(7) Advisory Board--The Midwifery Advisory Board appointed by the presiding officer of the Commission with the approval of the Commission.

(8) Newborn care--The care of a child for the first six weeks of the child's life.

(9) Normal childbirth--The labor and vaginal delivery at or close to term (37 up to 42 weeks) of a pregnant woman whose assessment reveals no abnormality or signs or symptoms of complications.

(10) Physician--A physician licensed to practice medicine in Texas by the Texas Medical Board.

(11) Postpartum care--The care of a woman for the first six weeks after the woman has given birth.

(12) Program--The department's midwifery program.

(13) Public health district--A district created under the Health and Safety Code, Chapter 121, Subchapter E.

(14) Standing delegation orders--Written instructions, orders, rules, regulations or procedures prepared by a physician and designated for a patient population, and delineating under what set of conditions and circumstances actions should be instituted, as described in the rules of the Texas Medical Board in Chapter 193 (relating to Standing Delegation Orders) and §115.111 of this title (relating to Inter-professional Care).

(15) Retired midwife--A midwife licensed in Texas who is over the age of 55 and not currently employed in a health care field.

(16) Voluntary charity care--Midwifery care provided without compensation and with no expectation of compensation.

(17) Commission--The Texas Commission of Licensing and Regulation.

(18) Department--The Texas Department of Licensing and Regulation.

(19) Executive director--The executive director of the department.

§115.2. License Required.

(a) In order for an individual to legally practice midwifery in Texas, she/he must be currently licensed by the department.

(b) A midwife's initial license shall be valid from the date issued until March 1 of the following renewal period.

§115.3. Midwifery Advisory Board Duties.

The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter, including scope of practice and health related standards of care.

§115.4. Advisory Board Membership.

The Midwifery Advisory Board consists of nine members appointed by the presiding officer of the commission, with the approval of the commission as follows:

(1) five members each of whom has at least three years' experience in the practice of midwifery;

(2) two members who represent the public and who are not practicing or trained in a health care profession, one of whom is a parent with at least one child born with the assistance of a midwife;

(3) one physician member who is certified by a national professional organization of physicians that certifies obstetricians and gynecologists; and

(4) one physician member who is certified by a national professional organization of physicians that certifies family practitioners or pediatricians.

§115.5. Terms; Vacancies.

(a) Members of the advisory board serve staggered six-year terms. The terms of three members expiring on January 31st of each odd-numbered year.

(b) If a vacancy occurs on the board, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

(c) A member of the advisory board may be removed from the advisory board pursuant to Texas Occupations Code §51.209, Advisory Boards; Removal of Advisory Board Member.

§115.6. Officers.

(a) The presiding officer of the commission shall designate a member of the advisory board as the presiding officer of the advisory board to serve for a term of one year.

(b) The presiding officer of the advisory board shall preside at all board meetings at which he or she is in attendance. The presiding officer of the advisory board may vote on any matter before the advisory board.

§115.7. Meetings.

(a) The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

(b) Meetings shall be announced and conducted under the provisions of the Open Meetings Act, Texas Government Code, Chapter 551.

(c) A quorum of the advisory board is necessary to conduct official business.

(d) Advisory board action shall require a majority vote of those members present and voting.

§115.13. Initial Application for Licensure.

(a) Initial licensure. Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official department-approved forms. An individual may apply for licensure as a midwife at any time during the year by submitting the following to the department:

(1) a completed application on a department-approved form which shall contain:

(A) specific information regarding personal data, social security number, birth date, other licenses held, and misdemeanor or felony convictions;

(B) the date of the application;

(C) a statement that the applicant has read the Act and these rules and agrees to abide by them;

(D) a statement that the information in the application is truthful and that the applicant understands that providing false and misleading information on items which are material in determining the applicant's qualifications may result in the voiding of the application, or denial or the revocation of any license issued; and

(E) any other information required by the department.

(2) proof of satisfactory completion of a continuing education course covering the current Texas Midwifery Basic Information and Instructors Manual, and:

(A) satisfactory completion of a mandatory basic midwifery education course approved by the department and the North American Registry of Midwives (NARM) exam or any other comprehensive exam approved by the department;

(B) Certified Professional Midwife (CPM) certification by NARM; or

(C) satisfactory completion of a basic midwifery education course accredited by the Midwifery Education Accreditation Council (MEAC), and the North American Registry of Midwives (NARM) exam, or any other comprehensive exam approved by the department.

(3) proof of current cardiopulmonary resuscitation (CPR) certification for health care providers by the American Heart Association; equivalent certification for the professional rescuer from the Red Cross; equivalent certification for healthcare and professional rescuer from the National Safety Council; or equivalent certification issued by any provider of CPR certification for health care providers currently accepted by the Department of State Health Service's Office of EMS/Trauma Systems Coordination;

(4) proof of current certification for neonatal resuscitation, §§1 - 4, from the American Academy of Pediatrics;

(5) proof of satisfactory completion of training in the collection of newborn screening specimens or an established relationship with another qualified and appropriately credentialed health care provider who has agreed to collect newborn screening specimens on behalf of the applicant;

(6) a nonrefundable fee required under §115.80; and

(7) proof of passing the jurisprudence examination approved by the department. The jurisprudence examination must have been taken no more than one year prior to the date of application.

(b) Initial licensure after interim of more than four years. A midwife seeking initial licensure who has not become licensed within four years of completing a basic midwifery education course approved by the department or accredited by MEAC shall in addition provide proof of having completed at least 40 contact hours of approved midwifery continuing education within the year preceding the application, which shall be based upon a review of:

(1) the current Texas Midwifery Basic Information and Instructors Manual; and

(2) the current Midwives Alliance of North America (MANA) Core Competencies and Standards of Practice.

(c) The applicant must successfully pass a criminal history background check.

(d) Pursuant to Texas Occupations Code, Chapters 51 and 203, the commission or the executive director may deny the application for violation of the Act.

(e) If after review the department determines that the application should not be approved, the department shall give the applicant written notice of the reason for the proposed decision and of the opportunity for a hearing under Texas Government Code, Chapter 2001.

§115.14. License Renewal.

In order to renew every two years, a midwife's application for license renewal must include the following:

(1) a completed license renewal application form which shall require the provision of the preferred mailing address and telephone number, and a statement of all misdemeanor and felony offenses for which the licensee has been convicted, along with any other information required by the department;

(2) proof of completion of at least 20 contact hours of approved midwifery education since March 1 of the previous two-year renewal period;

(3) proof of a current CPR certification for health care providers from one of the following:

(A) the American Heart Association;

(B) equivalent certification for the professional rescuer from the Red Cross;

(C) equivalent certification for healthcare and professional rescuer from the National Safety Council; or

(D) equivalent certification issued by any provider of CPR certification for health care providers currently accepted by the Department of State Health Services' Office of EMS/Trauma Systems Coordination;

(4) proof of current certification for neonatal resuscitation, §§1 - 4, from the American Academy of Pediatrics;

(5) a nonrefundable renewal fee; and

(6) proof of passing the jurisprudence examination approved by the department in the four years preceding renewal.

§115.15. Late Renewal.

Late license renewal. A midwife who fails to apply for license renewal by March 1 of the end of a renewal period in which the midwife is currently licensed, may apply for late license renewal on or before March 1 of the following year. Applications for late license renewal must include the following:

(1) each of the items required for timely renewal; and

(2) a nonrefundable late renewal fee.

§115.16. Renewal for Retired Midwives Performing Charity Work.

(a) A retired midwife who is only providing voluntary charity care:

(1) may apply to renew his or her midwifery license by submitting all the items required for renewal and the retired midwife renewal fee.

(2) may renew his or her midwifery license by submitting all the items required for renewal, the retired midwife renewal fee, and only five hours of approved midwifery continuing education.

(3) may renew his or her midwifery license late by submitting all the items required for late renewal, the retired midwife renewal fee, and only five hours of approved midwifery continuing education.

(b) A retired midwife who has previously renewed under this subsection, and then subsequently seeks to return to employment in the active practice of midwifery in Texas, must either:

(1) be currently licensed under this subsection but not due for renewal, and submit the following items to the department:

(A) ten hours of continuing education, taken in the 12 months preceding the application;

(B) the retired midwife reinstatement fee; and

(C) a written request to return his or her license to active status; or

(2) be currently licensed under this subsection and when billed for renewal, submit all the items required for renewal with a written request to return his or her license to active status; and

(3) receive approval from the department prior to returning to active practice.

§115.20. Basic Midwifery Education.

(a) The department shall consider for approval only courses which have a course supervisor/administrator and site in Texas.

(b) Mandatory basic midwifery education shall:

(1) be offered to ensure that only trained individuals practice midwifery in Texas;

(2) be offered by any individual or organization meeting the requirements for course approval established by this subsection;

(3) include a didactic component which shall:

(A) be based upon and completely cover the most current Core Competencies and Standards of Practice of the Midwives Alliance of North America (MANA) and the current Texas Midwifery Basic Information Manual;

(B) prepare the student to apply for certification by North American Registry of Midwives (NARM); and

(C) include a minimum of 250 hours course work.

(4) be supervised and conducted by a course supervisor/administrator who shall:

(A) be responsible for all aspects of the course; and

(B) have two years of experience in the independent practice of midwifery, nurse-midwifery or obstetrics; and

(C) have been primary care giver for at least 75 births including provision of prenatal, intrapartum, and postpartum care; and

(D) have met initial licensure requirements; or

(E) be a Certified Professional Midwife (CPM); or

(F) be American College of Nurse Midwives (ACNM) certified; or

(G) be a licensed physician in Texas actively engaged in the practice of obstetrics.

(5) include didactic curriculum instructors who:

(A) have training and credentials for the course material they will teach; and

(B) are approved by the course supervisor/administrator.

(6) provide clinical experience/preceptorship of at least one year but no more than five years and equivalent to 1,350 clinical contact hours which prepares the student to become certified by NARM, including successful completion of at least the following activities:

(A) serving as an active participant in attending 20 births;

(B) serving as the primary midwife, under supervision, in attending 20 additional births, at least 10 of which shall be out-of-hospital births. A minimum of 3 of the 20 births attended as primary midwife under supervision must be with women for whom the student has provided primary care during at least 4 prenatal visits, birth, newborn exam and one postpartum exam;

(C) serving as the primary midwife, under supervision, in performing:

(i) 75 prenatal exams, including at least 20 initial history and physical exams;

(ii) 20 newborn exams; and

(iii) 40 postpartum exams.

(7) include preceptors who are approved by the course supervisor/administrator and shall be:

(A) licensed midwives;

(B) certified professional midwives;

(C) certified nurse midwives; or

(D) physicians licensed in the United States and actively engaged in the practice of obstetrics.

(c) Individuals enrolled as students in an approved midwifery course must possess:

(1) a high school diploma or the equivalent; and

(2) a current Cardiopulmonary Resuscitation (CPR) certificate for health care providers from the American Heart Association; an equivalent CPR certificate for the professional rescuer from the Red Cross; equivalent certification for healthcare and professional rescuer from the National Safety Council; or equivalent certification issued by any provider of CPR certification for health care providers currently accepted by the Department of State Health Services' Office of EMS/Trauma Systems Coordination.

§115.21. Education Course Approval.

(a) Course approval.

(1) The course supervisor/administrator shall submit an application form and a non-refundable initial midwifery course application fee to the department with the following supporting documentation:

(A) course outline;

(B) course curriculum with specific content references to:

(i) MANA Core Competencies;

(ii) NARM Written Test Specifications;

(iii) NARM Skills Assessment Test Specifications;

(iv) Texas Midwifery Basic Information and Instructor Manual; and

(v) protocol writing, adaptation and revision.

(C) identification of didactic and preceptorship teaching sites;

(D) a financial statement or balance sheet (within the last year) for the course supervisor/administrator or course owner and disclosure of any bankruptcy within the last five years; and

(E) written policies to include:

(i) tuition schedule, other charges, and cancellation and refund policy, including the right of any prospective student to cancel his/her enrollment agreement within 72 hours after signing the agreement and receive a full refund of any money paid;

(ii) student attendance, progress, and grievance policies;

(iii) rules of operation and conduct of school personnel;

(iv) requirements for state licensure;

(v) disclosure of approval status of course;

(vi) maintenance of student files; and

(vii) reasonable access for non-English speakers and compliance with federal and state laws on accessibility.

(2) Student files shall be maintained for a minimum of five years and shall include:

(A) evidence that the entrance requirements have been met;

(B) documentation demonstrating completion of didactic and clinical course work; and

(C) copies of any financial agreements between the student and the school.

(3) The department staff shall review each course application submitted for approval. If an application for initial approval meets all of the requirements specified in this paragraph, a one-year provisional approval will be granted. An on-site evaluation of the course shall be scheduled. The evaluation shall be conducted by a member of the department staff and a licensed midwife within the provisional year. The site visit will include the following:

(A) an inspection of the course's facilities;

(B) a review of its teaching plan, protocols, and teaching materials;

(C) a review of didactic and preceptorship instruction;

(D) interviews with staff and students; and

(E) a review of student, staff and preceptor files, to include coursework, protocols, and financial records.

(4) A nonrefundable site visit fee shall be assessed for each site visit.

(5) The site visit written report shall recommend to the department approval or denial of the course.

(6) The department shall evaluate the application and all other pertinent information, including any complaints received and the site visit report.

(b) Course reciprocity. A basic midwifery education course which is currently accredited by the Midwifery Education Accreditation Council (MEAC) shall be deemed approved under this subsection upon submission of evidence of such accreditation.

(c) Duration of course approval.

(1) The department shall approve courses for a three year period.

(2) Course supervisors/administrators shall reapply for approval six months prior to expiration.

(d) Course changes. Any substantive change(s) in the course or its content shall be submitted to the department within ten working days after change(s).

§115.23. Jurisprudence Examination.

(a) The department shall develop a jurisprudence examination.

(b) The subject matter covered by the examination shall include the Act, this chapter, and other Texas laws and rules which affect midwifery practice, as described in the current Texas Midwifery Basic Information and Instructor Manual.

(c) The department shall review and update the examination as needed.

§115.25. Continuing Education.

All continuing education taken by midwives for the purpose of obtaining or renewing a midwifery license must be in accordance with this section.

(1) Courses may be offered by any individual or organization that meets the requirements for course approval established by this section.

(2) Course curriculum must provide an educational experience which:

(A) covers new developments in the fields of midwifery or related disciplines; or

(B) reviews established knowledge in the fields of midwifery or related disciplines; and

(C) shall be presented in standard contact hour increments for continuing health education; and

(D) shall provide reasonable access for non-English speakers and comply with federal and state laws on accessibility.

(3) Course coordinators and instructors.

(A) Course coordinators shall obtain course approval, register and certify participant attendance, and provide attendance certificates to participants following the course.

(B) Course instructors shall have training and/or credentials appropriate for the course material they will teach.

(4) Course approval. Continuing education courses attended to fulfill licensure or license renewal requirements shall be accepted when the courses:

(A) satisfy the requirements of paragraph (2)(A) - (C); and

(B) are accredited by one of the following accrediting bodies:

(i) a professional midwifery association, nursing, social work, or medicine;

(ii) a college, a university, or an approved basic midwifery education course;

(iii) a nursing, medical, or health care organization;

(iv) a state board of nursing or medicine;

(v) a department of health; or

(vi) a hospital.

§115.70. Standards of Conduct.

The following are grounds for denial of application for licensure or license renewal and for disciplinary action.

(1) The commission or executive director may deny an application for initial licensure or license renewal and may take disciplinary action against any person based upon proof of the following:

(A) violation of the Act or rules adopted under the Act;

(B) submission of false or misleading information to the department;

(C) conviction of a felony or a misdemeanor involving moral turpitude;

(D) intemperate use of alcohol or drugs while engaged in the practice of midwifery;

(E) unprofessional or dishonorable conduct that may reasonably be determined to deceive or defraud the public;

(F) inability to practice midwifery with reasonable skill and safety because of illness, disability, or psychological impairment;

(G) judgment by a court of competent jurisdiction that the individual is mentally impaired;

(H) disciplinary action taken by another jurisdiction affecting the applicant's legal authority to practice midwifery;

(I) submission of a birth or death certificate known by the individual to be false or fraudulent, or other noncompliance with Health and Safety Code, Chapter 191, or 25 Texas Administrative Code (TAC), Chapter 181 (relating to Vital Statistics);

(J) noncompliance with Health and Safety Code, Chapter 244, or 25 TAC, Chapter 137 (relating to Birthing Centers);

(K) failure to practice midwifery in a manner consistent with the public health and safety;

(L) failure to submit midwifery records in connection with the investigation of a complaint; or

(M) demonstrated lack of personal or professional character in the practice of midwifery.

(2) The department may refuse to renew the license of a person who fails to pay an administrative penalty imposed under the Act, unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

(3) The commission or executive director may revoke course approval if:

(A) the course no longer meets one or more of the established standards;

(B) the course supervisor, instructor(s), or preceptor(s) do not have the required qualifications;

(C) course approval was obtained by fraud or deceit;

(D) the course supervisor falsified course registration, attendance, completion and/or other records; or

(E) continued approval of the course is not in the public interest.

§115.75. License Surrender.

(a) A license issued by the department is the property of the department and shall be surrendered on demand.

(b) A licensee may also voluntarily surrender his or her license to the department.

§115.80. Fees.

All fees must be made payable to the department and are nonrefundable.

(1) Application fee--$275

(2) Renewal fee--$550 for each two-year renewal period

(3) Duplicate license fee--$20

(4) Retired midwife renewal fee--$275

(5) Retired midwife reinstatement fee--$275

(6) Jurisprudence examination fee--$35

(7) Education course initial application fee--$150

(8) Education course site visit fee--$500

(9) Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(10) Dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title (relating to Dishonored Check Fee).

(11) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

§115.90. State Roster of Licensed Midwives.

The department shall maintain a roster of all individuals currently licensed to practice midwifery in the state. A copy of the roster shall be provided to each county clerk and local registrar of births on request. The department shall also provide information on new and/or late licensees to individual county clerks and local registrars of births during the course of a year as needed.

§115.100. Standards for the Practice of Midwifery in Texas.

(a) Midwifery care supports individual rights and self-determination within the boundaries of safety. Using reasonable skill and knowledge, the midwife shall:

(1) provide clients with a description of the scope of midwifery services and information regarding the client's rights and responsibilities in accordance with the Act;

(2) assess the client on an ongoing basis for any factors which might preclude a client from admission into or continuing in midwifery care;

(3) provide clients with information about other providers and services when requested or when the care required is not within the scope of practice of midwifery; and

(4) practice in accordance with the knowledge, clinical skills, and judgments described in the Midwives Alliance of North America (MANA) Core Competencies for Basic Midwifery Practice, adopted August 4, 2011, within the bounds of the midwifery scope of practice as defined by the Act and Rules;

(b) The midwife shall provide care in a safe and clean environment. The midwife shall:

(1) carry and use when needed, resuscitation equipment; and

(2) use universal precautions for infection control.

(c) Midwifery care is documented in legible, complete health records. The midwife shall:

(1) maintain records that completely and accurately document the client's history, physical exam, laboratory test results, antepartum visits, consultation reports, referrals, labor, delivery, postpartum visits, and neonatal evaluations at the time midwifery services are delivered and when reports are received;

(2) grant clients access to their records within 30 days of the date the request is received;

(3) provide a mechanism for sending a copy of the health record upon referral or transfer to other levels of care;

(4) maintain the confidentiality of client records; and

(5) maintain records:

(A) for the mother, for a minimum of five years; and

(B) for the infant, until the age of majority.

(d) Midwifery care includes documentation of a periodic process of evaluation and quality assurance of midwifery practice. The midwife shall:

(1) collect client care data systematically and be involved in analysis of that data for the evaluation of the process and outcome of care;

(2) review problems identified by the midwife or by other professionals or consumers in the community; and

(3) act to resolve problems that are identified.

§115.111. Inter-professional Care.

The following definitions regarding inter-professional care of women within a midwifery model of care apply to this chapter.

(1) Consultation is the process by which a midwife, who maintains primary management responsibility for the woman's care, seeks the advice of another health care professional or member of the health care team.

(2) Collaboration is the process in which a midwife and a health care practitioner of a different profession jointly manage the care of a woman or newborn who needs joint care, such as one who has become medically complicated. The scope of collaboration may encompass the physical care of the client, including delivery, by the midwife, according to a mutually agreed-upon plan of care. If a physician must assume a dominant role in the care of the client due to increased risk status, the midwife may continue to participate in physical care, counseling, guidance, teaching, and support. Effective communication between the midwife and the health care professional is essential to ongoing collaborative management.

(3) Referral is the process by which a midwife directs the client to a health care professional who has current obstetric or pediatric knowledge and is either a physician licensed in the United States; or working in association with a licensed physician. The client and the physician (or associate) shall determine whether subsequent care shall be provided by the physician or associate, the midwife, or through collaboration between the physician or associate and midwife. The client may elect not to accept a referral or a physician or associate's advice, and if such is documented in writing, the midwife may continue to care for the client.

(4) Transfer is the process by which a midwife relinquishes care of the client for pregnancy, labor, delivery, or postpartum care or care of the newborn to another health care professional who has current obstetric or pediatric knowledge and is either a physician licensed in the United States; or working in association with a licensed physician. If a client elects not to accept a transfer, the midwife shall terminate the midwife-client relationship. If the transfer recommendation occurs during labor, delivery, or the immediate postpartum period, and the client refuses transfer; the midwife shall call 911 and provide further care as indicated by the situation. If the midwife is unable to transfer to a health care professional, the client will be transferred to the nearest appropriate health care facility. The midwife shall attempt to contact the facility and continue to provide care as indicated by the situation.

(5) Standing orders from a physician licensed in Texas must be obtained if a midwife provides any prescription medication to a client or her newborn other than oxygen and eye prophylaxis. The orders must be current (renewed annually) and must comply with the rules of the Texas Medical Board. Midwives have the responsibility not to comply with an outdated order.

§115.112. Termination of the Midwife-Client Relationship.

A midwife shall terminate care of a client only in accordance with this section unless a transfer of care results from an emergency situation.

(1) Once the midwife has accepted a client, the relationship is ongoing and the midwife cannot refuse to continue to provide midwifery care to the client unless:

(A) the client has no need of further care;

(B) the client terminates the relationship; or

(C) the midwife formally terminates the relationship.

(2) The midwife may terminate care for any reason by:

(A) providing a minimum of 30 days written notice, during which the midwife shall continue to provide midwifery care, to enable the client to select another health care provider;

(B) making an attempt to tell the client in person and in the presence of a witness of the midwife's wish to terminate care;

(C) providing referrals; and

(D) documenting the termination of care in midwifery records.

(3) Termination of Care during Labor. If the midwife deems that midwifery care is no longer within her scope and the client is non-compliant, the midwife may:

(A) recommend transport;

(B) call 911 and allow client to refuse EMS care; and

(C) have a sign and dated written document that describes the reason for the termination and the signatures of both the midwife and the client.

§115.113. Transfer of Care in an Emergency Situation.

In an emergency situation, the midwife shall initiate emergency care as indicated by the situation and immediate transfer of care by making a reasonable effort to contact the health care professional or institution to whom the client will be transferred and to follow the health care professional's instructions; and continue emergency care as needed while:

(1) transporting the client by private vehicle; or

(2) calling 911 and reporting the need for immediate transfer.

§115.114. Prenatal Care.

(a) Using reasonable skill and knowledge, the midwife shall collect, assess, and document maternal care data through a detailed obstetric, gynecologic, medical, social, and family history and a complete prenatal physical exam and appropriate laboratory testing; develop and implement a plan of care; thereafter evaluate the client's condition on an ongoing basis; and modify the plan of care as necessary. Health education/counseling shall be provided by the midwife as appropriate.

(b) If on initial or subsequent assessment, one of the following conditions exists, the midwife shall recommend referral and document that recommendation in the midwifery record:

(1) infection requiring antimicrobial therapy;

(2) Hepatitis;

(3) non-insulin dependent diabetes;

(4) thyroid disease;

(5) current drug or alcohol abuse;

(6) asthma;

(7) abnormal pap smear (consistent with malignancy or pre-malignancy) during the current pregnancy;

(8) seizure disorder;

(9) prior cesarean section (except for prior classical or vertical incision, which will require transfer in accordance with subsection (c)(8));

(10) multiple gestation;

(11) history of prior antepartum or neonatal death;

(12) history of prior infant with a genetic disorder;

(13) significant vaginal bleeding;

(14) maternal age less than 15 at EDC;

(15) cancer or history of cancer;

(16) psychiatric illness; or

(17) any other condition or symptom which could adversely affect the mother or fetus, as assessed by a midwife exercising reasonable skill and knowledge.

(c) If on initial or subsequent assessment, one of the following conditions exists, the midwife shall recommend transfer in accordance and document that recommendation in the midwifery record:

(1) placenta previa in the third trimester;

(2) Human Immunodeficiency Virus (HIV) positive or Acquired Immunodeficiency Syndrome (AIDS);

(3) cardio vascular disease, including hypertension, with the exception of varicosities;

(4) severe psychiatric illness;

(5) history of cervical incompetence with surgical therapy;

(6) pre-term labor (less than 37 weeks);

(7) Rh or other blood group isoimmunization;

(8) any previous cesarean section with a vertical or classical incision, or any previous uterine surgery which required an incision in the uterine fundus;

(9) preeclampsia/eclampsia;

(10) documented oligo-hydramnios or poly-hydramnios;

(11) any known fetal malformation;

(12) Preterm Premature Rupture Of Membranes (PPROM);

(13) intrauterine growth restriction;

(14) insulin dependent diabetes; or

(15) any other condition or symptom which could threaten the life of the mother or fetus, as assessed by a midwife exercising reasonable skill and knowledge.

(d) In lieu of referral or transfer, the midwife may manage the client in collaboration with an appropriate health care professional of this title.

§115.115. Labor and Delivery.

(a) Using reasonable skill and knowledge, the midwife shall evaluate the client when the midwife arrives for labor and delivery, by obtaining a history, performing a physical exam, and collecting laboratory specimens.

(b) The midwife shall monitor the client's progress in labor by monitoring vital signs, contractions, fetal heart tones, cervical dilation, effacement, station, presentation, membrane status, input/output and subjective status as indicated.

(c) The midwife shall assist in normal, spontaneous vaginal deliveries.

(d) The midwife shall not engage in the following:

(1) application of fundal pressure on abdomen or uterus during first or second stage of labor;

(2) administration of oxytocin, ergot, or prostaglandins prior to or during first or second stage of labor; or

(3) any other prohibited practice as delineated by the Act, §203.401 (relating to Prohibited Practices).

(e) If on initial or subsequent assessment during labor or delivery, one of the following conditions exists, the midwife shall initiate immediate emergency transfer and document that action in the midwifery record:

(1) prolapsed cord;

(2) chorio-amnionitis;

(3) uncontrolled hemorrhage;

(4) gestational hypertension/preeclampsia/eclampsia;

(5) severe abdominal pain inconsistent with normal labor;

(6) a non-reassuring fetal heart rate pattern;

(7) seizure;

(8) thick meconium unless the birth is imminent;

(9) visible genital lesions suspicious of herpes virus infection;

(10) evidence of maternal shock;

(11) preterm labor (less than 37 weeks);

(12) presentation(s) not compatible with spontaneous vaginal delivery;

(13) laceration(s) requiring repair beyond the scope of practice of the midwife;

(14) failure to progress in labor;

(15) retained placenta; or

(16) any other condition or symptom which could threaten the life of the mother or fetus, as assessed by a midwife exercising reasonable skill and knowledge.

§115.116. Postpartum Care.

(a) Using reasonable skill and knowledge, the midwife shall assess the mother during the immediate postpartum period by monitoring vital signs, uterine fundus, bleeding and subjective status for a minimum of two hours after mother's condition is stable as indicated.

(b) Using reasonable skill and knowledge, the midwife shall:

(1) collect, assess and document maternal care data throughout the postpartum period including history, physical exam, laboratory testing;

(2) develop and implement a plan of care;

(3) evaluate the client's condition on an ongoing basis and modify the plan of care as necessary; and

(4) provide health education/counseling.

(c) If on any postpartum assessment one of the following conditions exists, the midwife shall recommend referral to an appropriate health care professional and document that recommendation in the midwifery record:

(1) infection requiring antimicrobial therapy;

(2) bladder dysfunction;

(3) major depression; or

(4) any other condition or symptom which could threaten the health of the mother, as assessed by a midwife exercising reasonable skill and knowledge.

(d) If on any postpartum assessment one of the following conditions exists, the midwife shall initiate immediate emergency transfer, initiate emergency care as indicated by the situation, continue care as needed, and document that action in the midwifery record:

(1) uncontrolled hemorrhage;

(2) maternal shock;

(3) any hypertensive disorder, including preeclampsia/eclampsia;

(4) signs of thrombophlebitis or pulmonary embolism; or

(5) any other condition or symptom which could threaten the life of the mother, as assessed by a midwife exercising reasonable skill and knowledge.

§115.117. Newborn Care During the First Six Weeks After Birth.

(a) Prior to delivery, the midwife shall establish a plan with the client for continuing care of the newborn. This plan shall:

(1) include referral or transfer to a health care professional who has current pediatric knowledge;

(2) include a recommendation that the client pre-arrange the timing of the first newborn visit with the health care professional; and

(3) be documented in the midwifery record.

(b) Using reasonable skill and knowledge, the midwife shall:

(1) collect, assess and document newborn care data by monitoring the vital signs, performing a physical exam, and obtaining the laboratory tests necessary for the infant during the postpartum period;

(2) provide appropriate education and counseling to the mother; and

(3) observe the newborn for a minimum of two hours after he or she is stable with no signs of distress.

(c) If on any newborn assessment in the immediate postpartum period (first six hours of life), one of the following conditions exists, the midwife shall recommend referral and document that recommendation in the midwifery record:

(1) birth injury;

(2) gestational age assessment less than 36 weeks;

(3) small for gestational age;

(4) large for gestational age; or

(5) any other abnormal newborn behavior or appearance which could adversely affect the newborn, as assessed by a midwife exercising reasonable skill and knowledge.

(d) If on any newborn assessment in the immediate postpartum period (first six hours of life), one of the following conditions exists, the midwife shall initiate immediate transfer to an appropriate health care professional, initiate emergency care as indicated by the situation, continue care as needed, and document that action in the midwifery record:

(1) non-transient respiratory distress;

(2) non-transient pallor or central cyanosis;

(3) jaundice;

(4) apgar at 5 minutes less than or equal to 6;

(5) prolonged apnea;

(6) hemorrhage;

(7) signs of infection;

(8) seizure;

(9) major congenital anomaly not diagnosed prenatally;

(10) unstable vital signs;

(11) prolonged:

(A) lethargy;

(B) flaccidity; or

(C) irritability;

(12) inability to suck;

(13) persistent jitteriness;

(14) hyperthermia;

(15) hypothermia; or

(16) other abnormal newborn behavior or appearance which could threaten the life of the newborn, as assessed by a midwife exercising reasonable skill and knowledge.

(e) If on any newborn assessment after the immediate postpartum period, one of the following conditions exists, the midwife shall recommend referral to an appropriate health care professional and document that recommendation in the midwifery record:

(1) abnormal laboratory test results;

(2) minor congenital anomaly;

(3) failure to thrive; or

(4) any other abnormal newborn behavior or appearance which could adversely affect the infant, as assessed by a midwife exercising reasonable skill and knowledge.

(f) If on any newborn assessment after the immediate postpartum period, one of the following conditions exists, the midwife shall initiate immediate transfer to an appropriate health care professional and document that action in the midwifery record:

(1) respiratory distress;

(2) pallor or central cyanosis;

(3) pathological jaundice;

(4) hemorrhage;

(5) seizure;

(6) inability to urinate or pass meconium within 24 hours of birth;

(7) unstable vital signs;

(8) lethargy;

(9) flaccidity;

(10) irritability;

(11) inability to feed;

(12) persistent jitteriness; or

(13) any other abnormal newborn behavior or appearance which could threaten the life of the newborn, as assessed by a midwife exercising reasonable skill and knowledge.

§115.118. Administration of Oxygen.

(a) Purpose. This section outlines procedures for administration of oxygen by midwives. Whether or not a midwife chooses to administer oxygen to the mother and/or newborn, the midwife remains responsible for assessing the client and/or newborn; recommending referral; and/or recommending transfer or transport of the mother and newborn.

(b) Under this section a midwife is not required to use oxygen.

(c) Provisions. This section establishes that:

(1) intrapartum oxygen may be administered to the mother for the following:

(A) fetal heart rate irregularities while assessing for consultation and/or possible transfer;

(B) cord prolapse prior to transport;

(C) signs or symptoms of maternal shock or hemorrhage prior to transport; or

(D) as indicated by American Heart Association Cardiopulmonary Resuscitation guidelines;

(2) postpartum oxygen may be administered while monitoring according to the Midwifery Practice Standards and Principles:

(A) to the newborn during the initial neonatal period at a rate concurrent with American Academy of Pediatrics Neonatal Resuscitation guidelines; or

(B) to the mother and/or newborn in other situations not listed above and deemed necessary according to generally accepted standards of midwifery practice to protect the health and well-being of the mother and/or newborn;

(3) indications for administration of oxygen shall be clearly documented in the client's chart.

(d) Midwives are authorized to purchase equipment and supplies listed in the American Heart Association Cardiopulmonary Resuscitation Guidelines and the American Academy of Pediatrics Neonatal Resuscitation Guidelines for the administration of oxygen.

§115.119. Eye Prophylaxis.

(a) Each midwife is responsible for administering or causing to be administered to every infant which she or he delivers the necessary eye prophylaxis to prevent ophthalmia neonatorum in accordance with the medications specified in Health and Safety Code, §81.091.

(b) A midwife must obtain a written exemption from treatment in accordance with Health and Safety Code, §81.009 from any parent who refuses to allow a midwife to administer or cause to be administered eye prophylaxis in accordance with Health and Safety Code, §81.091

(c) The administration and possession of prophylaxis by a midwife is not a violation of the provisions of the Health and Safety Code, Chapter 483, concerning dangerous drugs

§115.120. Newborn Screening.

(a) Each midwife who assists at the birth of a child is responsible for performing the newborn screening tests according to the Health and Safety Code, Chapters 33 and 34, and 25 TAC §§37.51 - 37.65, or making a referral in accordance with this subsection. If the midwife performs the tests, then she or he must have been appropriately trained. Each midwife must have one of the following documents on file with the department in order to be licensed.

(1) Midwife Training Certification Form for Newborn Screening Specimen Collection. Should the midwife choose to do the newborn screening she or he will obtain training to perform this test from an appropriate health care facility. Instruction will be based upon the procedure for newborn screening developed by the Department of State Health Service's Newborn Screening Program under authority of the Health and Safety Code, Chapter 33. At the completion of the instruction for newborn screening blood collection, the midwife will request that the form Midwife Training Certification Form for Newborn Screening Specimen Collection be signed by the designated representative of the health care facility, attesting to the fact that the midwife has complied with this requirement. This training, as part of the licensure requirements, is only necessary once unless there is a change in screening procedures.

(2) Newborn Screening Agreement for Newborn Babies of Midwife Clients. The midwife could also choose to refer the family to have the infant's screening done at an appropriate health care facility. In this case, the midwife must use the form Newborn Screening Agreement for Newborn Babies of Midwife Clients to attest to her responsibility for seeing that the screening is done and to designate a facility for such screening. The form must include a section where the facility representative signs, agreeing that the facility will do the screening.

(b) As long as the midwife has been approved to perform the newborn screening test, the act of collecting this specimen will not constitute "practicing medicine" as defined by the Medical Practice Act.

(c) As long as one is available, a physician or an appropriately trained professional acting under standing delegation order from a physician at an appropriate health care facility shall instruct midwives in the proper procedure (newborn screening collection procedure of the Department of State Health Services' Newborn Screening Program) for newborn screening blood specimen collection and submission. The physician, registered nurse, or any other person who instructs a midwife in the approved techniques for newborn screening on the orders of a physician is immune from liability arising out of the failure or refusal of a midwife to:

(1) collect and submit the blood specimen in an approved manner; or

(2) send the samples to the laboratories designated by the Department of State Health Services in a timely manner.

(d) Newborn Screening Test Objection Form. A midwife must obtain a completed and signed Newborn Screening Test Objection form from any parent who refuses to allow a midwife to perform the newborn screening tests.

§115.121. Informed Choice and Disclosure Statement.

The written informed choice and disclosure statement which has been approved by the department shall include:

(1) an informed choice statement containing:

(A) statistics of the midwife's experience as a midwife;

(B) the date of expiration of the midwife's license;

(C) the date of expiration of the midwife's adult and infant cardiopulmonary resuscitation and neonatal resuscitation certification;

(D) the midwife's compliance with continuing education requirements; and

(E) medical backup arrangements; and

(2) a disclosure statement, which includes the legal requirements of the midwife and prohibited acts as stated in the Act. The disclosure statement may not exceed 500 words and must be in Spanish and English; and must contain;

(3) information on where to file a complaint against a licensed midwife, including the name, mailing address and telephone number for the department.

§115.122. Obtain Complaint Information without Consent of Client.

The department shall obtain all relevant midwifery records and medical records necessary to conduct an investigation of a complaint without the necessity of consent of the midwife's client.

§115.123. Administrative Penalties and Sanctions.

If a person or entity violates any provision of Texas Occupations Code, Chapters 51 or 203, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapter 51 and 203 and any associated rules.

§115.125. Enforcement Authority.

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 203 and any associated rules may be used to enforce Texas Occupations Code, Chapters 51, 203 and this chapter.

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 December 18, 2015.

TRD-201505745
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: January 31, 2016
For further information, please call: (512) 463-8179

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CHAPTER 116. DIETITIANS

The Texas Department of Licensing and Regulation (Department) proposes new rules at 16 Texas Administrative Code (TAC) Chapter 116, Subchapter A, §116.1 and §116.2; Subchapter B, §§116.10, 116.11, 116.12, 116.13, and 116.14; Subchapter C, §116.20 and §116.21; Subchapter D, §116.30; Subchapter E, §§116.40, 116.41, 116.42, 116.43 and 116.44; Subchapter F, §§116.50, 116.51, 116.52 and 116.53; Subchapter G, §§116.60, 116.61, 116.62, 116.63, 116.64 and 116.65; Subchapter H, §116.70; Subchapter I, §§116.80, 116.81, 116.82 and 116.83; Subchapter J, §116.90 and §116.91; Subchapter K, §§116.100, 116.101, 116.103, 116.104 and 116.105; Subchapter L, §116.110; Subchapter M, §116.120; Subchapter N, §§116.130, 116.131 and 116.132; and Subchapter O, §§116.140, 116.141 and 116.142, regarding the Dietitians program.

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which, in part, transferred 13 occupational licensing programs in two phases from the Department of State Health Services (DSHS) to the Texas Commission of Licensing and Regulation (Commission) and the Department. Under Phase 1, the following seven programs are being transferred from DSHS to the Commission and the Department: (1) Midwives, Texas Occupations Code, Chapter 203; (2) Speech-Language Pathologists and Audiologists, Chapter 401; (3) Hearing Instrument Fitters and Dispensers, Chapter 402; (4) Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists, Chapter 403; (5) Athletic Trainers, Chapter 451; (6) Orthotists and Prosthetists, Chapter 605; and (7) Dietitians, Chapter 701. The statutory amendments transferring regulation of these seven Phase 1 programs from DSHS to the Commission and the Department took effect on September 1, 2015.

The Texas Legislature also enacted Senate Bill 219 (S.B. 219), 84th Legislature, Regular Session (2015), which, in part, amended the enabling acts of the health-related programs regulated by DSHS before those programs were transferred by S.B. 202. S.B. 219 was effective April 2, 2015.

The new rules are proposed to enable the Commission and the Department to regulate the seven Phase 1 programs listed above. The proposed new rules provide for the Department to perform the various functions, including licensing, compliance, and enforcement, necessary to regulate these transferred programs. At the time of adoption, the Commission will designate the effective date of the new rules. The effective date will coincide with the completion of the transfer of the programs to the Commission and Department. The Commission will provide sufficient notice to the regulated community in order for it to comply with the new rules.

The proposed new rules under 16 TAC Chapter 116 are necessary to implement S.B. 202 and to regulate the Dietitians program under the authority of the Commission and the Department. The rules also incorporate the changes made by S.B. 219 as applicable. These proposed new rules are separate from and are not to be confused with the DSHS rules located at 22 TAC Chapter 711, regarding the Dietitians program, which are still in effect.

The Department's Dietitians Advisory Board was scheduled to meet on November 12, 2015. Although the board lacked a quorum, the members present discussed a draft of these proposed rules with the Department before they were published in the *Texas Register* for public comment.

Proposed new Subchapter A provides the General Provisions for the proposed new rules.

Proposed new §116.1 provides the statutory authority for the Commission and Department to regulate dietitians.

Proposed new §116.2 creates the definitions to be used in the dietitians program.

Proposed new Subchapter B creates the Dietitians Advisory Board.

Proposed new §116.10 provides the composition and membership requirements of the advisory board.

Proposed new §116.11 details the duties of the advisory board.

Proposed new §116.12 sets the terms and vacancies process for advisory board members.

Proposed new §116.13 provides for a presiding officer of the advisory board.

Proposed new §116.14 provides details regarding advisory board meetings.

Proposed new Subchapter C establishes the education requirements for the dietitians profession.

Proposed new §116.20 details the degrees and coursework needed to apply for licensure.

Proposed new §116.21 details the transcripts the department will accept from those seeking licensure.

Proposed new Subchapter D establishes the experience requirements needed for the dietitians profession.

Proposed new §116.30 explains the requirements for preplanned professional experience programs and internships.

Proposed new Subchapter E establishes the examination requirements.

Proposed new §116.40 provides general provisions regarding license examinations.

Proposed new §116.41 creates license examination qualifications for those seeking licensure.

Proposed new §116.42 details the license examination process.

Proposed new §116.43 explains the process for examination failures.

Proposed new §116.44 details the requirements for the Texas Jurisprudence Examination.

Proposed new Subchapter F establishes the licensing and renewal requirements for licensed dietitians.

Proposed new §116.50 details the application and eligibility requirements for licensed dietitians.

Proposed new §116.51 provides the fitness requirements for licensed dietitian applicants.

Proposed new §116.52 explains the process of issuing licenses and identification cards for licensed dietitians.

Proposed new §116.53 details the license terms and the renewal requirements for licensed dietitians.

Proposed new Subchapter G establishes the licensing and renewal requirements for provisional licensed dietitians.

Proposed new §116.60 details the application and eligibility requirements for provisional licensed dietitians.

Proposed new §116.61 provides the fitness requirements for provisional licensed dietitian applicants.

Proposed new §116.62 explains the process of issuing licenses and identification cards for provisional licensed dietitians.

Proposed new §116.63 details the license terms and the renewal requirements for provisional licensed dietitians.

Proposed new §116.64 explains the process for a provisional licensed dietitian to upgrade to a licensed dietitian.

Proposed new §116.65 establishes supervision requirements for provisional licensed dietitians.

Proposed new Subchapter H establishes the licensing requirements for temporary licensed dietitians.

Proposed new §116.70 details the application and eligibility requirements for temporary licensed dietitians and explains the license term.

Proposed new Subchapter I establishes the continuing education requirements for the dietitians profession.

Proposed new §116.80 establishes the general requirements and hours of continuing education needed for license holders.

Proposed new §116.81 outlines the criteria for continuing education approved courses and credits.

Proposed new §116.82 explains the continuing education auditing process and the records that must be kept.

Proposed new §116.83 explains what happens when a license holder fails to complete the required continuing education.

Proposed new Subchapter J establishes the responsibilities of the Commission and Department.

Proposed new §116.90 provides that the Department will publish and maintain a registry of license holders.

Proposed new §116.91 requires the Commission to adopt rules necessary to implement the Dietitians program, including rules governing changes to the standards of practice rules.

Proposed new Subchapter K establishes the responsibilities of the licensee and the code of ethics.

Proposed new §116.100 requires all licensees to display the license certificate in a public manner.

Proposed new §116.101 requires all licensees to notify the Department of a name or address change.

Proposed new §116.103 details the information that all licensees must provide to clients and the public.

Proposed new §116.104 prohibits licensees from using unlawful, false, misleading or deceptive advertising and provides a list of such advertising.

Proposed new §116.105 creates a code of ethics for licensees.

Proposed new Subchapter L establishes fees for the Dietitians program.

Proposed new §116.110 details all fees associated with the Dietitians program as regulated by the Commission and the Department.

Proposed new Subchapter M establishes a subchapter to address complaints.

Proposed new §116.120 provides that the Commission will adopt rules regarding complaints involving standard of care.

Proposed new Subchapter N establishes enforcement provisions.

Proposed new §116.130 allows for administrative penalties and sanctions.

Proposed new §116.131 provides the authority to enforce Texas Occupations Code, Chapter 701 and this chapter.

Proposed new §116.132 requires a licensee to surrender his or her license to the Department on demand.

Proposed new Subchapter O includes specific information regarding the dietetic profession.

Proposed new §116.140 establishes the areas of expertise for the dietetic profession.

Proposed new §116.141 explains the scope of practice of a licensed dietitian to provide nutrition services in a licensed health facility and in a private practice setting.

Proposed new §116.142 explains the scope of practice and establishes continuing education requirements for a licensed dietitian who provides diabetes self-management training to clients.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed new rules are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed new rules. There is no estimated increase or decrease in revenue to the state as a result of enforcing or administering the proposed new rules. Historically, the funds used to administer the Dietitians program were appropriated to DSHS; now those same funds will be appropriated to the Department.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed new rules are in effect, the public benefit will include that the rules implement the statutory requirements under the authority of the Commission and the Department and provide details that are not found in the enabling acts. The rules also have been formatted and organized to assist the public, the regulated community, and the Department in easily finding specific rules. In addition, the new rules are streamlined so as not to duplicate provisions that are already located in the statutes and rules of the Commission and Department in the Texas Occupations Code and in 16 TAC Chapter 60, which apply to all programs regulated by the Commission and the Department.

There will be no anticipated economic effect on small and micro-businesses or to persons who are required to comply with the rules as proposed.

Since the agency has determined that the proposed new rules will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032; or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §116.1, §116.2

The new rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

§116.1. Authority.

The sections in this chapter are promulgated under the authority of the Texas Occupations Code, Chapters 51 and 701.

§116.2. Definitions.

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

(1) Academy--The Academy of Nutrition and Dietetics, which is the national professional association of dietitians.

(2) Accredited facilities--Facilities accredited by the Joint Commission on Accreditation of Health Care Organizations.

(3) Act--The Licensed Dietitian Act, Texas Occupations Code, Chapter 701.

(4) Advisory Board--Dietitians Advisory Board.

(5) Certified facilities, agencies, or organizations--Facilities, agencies, or organizations certified by federal agencies.

(6) Commission--The Texas Commission of Licensing and Regulation.

(7) Commission on Dietetic Registration (CDR)--The Commission on Dietetic Registration, the credentialing agency for the Academy of Nutrition and Dietetics, is the agency that evaluates credentials, administers proficiency examinations, and issues certificates of registration to qualifying dietitians, and is a member of the National Commission on Health Certifying Agencies. The Commission on Dietetic Registration also approves continuing education activities.

(8) CPE--Continuing Professional Experience.

(9) Department--The Texas Department of Licensing and Regulation.

(10) Dietitian--A person licensed under the Act.

(11) Dietetics--The professional discipline of applying and integrating scientific principles of food, nutrition, biochemistry, physiology, management, and behavioral and social sciences under different health, social, cultural, physical, psychological, and economic conditions to the proper nourishment, care, and education of individuals or groups throughout the life cycle to achieve and maintain the health of people. The term includes, without limitation, the development, management, and provision of nutrition services.

(12) Executive director--The executive director of the department.

(13) Licensed dietitian (LD)--A person licensed under the Act.

(14) Licensed facilities, agencies, or organizations--Facilities, agencies, or organizations licensed by state agencies.

(15) Licensee--A person who holds a current license as a dietitian or provisional licensed dietitian issued under the Act.

(16) Nutrition assessment--The evaluation of the nutritional needs of individuals and groups based on appropriate biochemical, anthropometric, physical, and dietary data to determine nutrient needs and recommend appropriate nutritional intake including enteral and parenteral nutrition. Nutrition assessment is an important component of medical nutrition therapy.

(17) Nutrition counseling--Advising and assisting individuals or groups on appropriate nutritional intake by integrating information from the nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status. Nutrition counseling is an important component of medical nutrition therapy.

(18) Nutrition services--This term means:

(A) assessing the nutritional needs of individuals and groups and determining resources and constraints in the practice;

(B) establishing priorities, goals, and objectives that meet nutritional needs and are consistent with available resources and constraints;

(C) providing nutrition counseling in health and disease;

(D) developing, implementing, and managing nutrition care systems; or

(E) evaluating, making changes in, and maintaining appropriate standards of quality in food and nutrition care services.

(19) Provisional licensed dietitian (PLD)--A person provisionally licensed under the Act.

(20) Registered dietitian (RD)--A person who is currently registered as a dietitian by the Commission on Dietetic Registration.

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 B. DIETITIANS ADVISORY BOARD

16 TAC §§116.10 - 116.14

The new rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

§116.10. Membership.

The Dietitians Advisory Board consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) six licensed dietitian members, each of whom has been licensed under the Act for not less than three years before the member's date of appointment; and

(2) three members who represent the public.

§116.11. Duties.

The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of the Act and this chapter.

§116.12. Terms; Vacancies.

(a) Members of the advisory board serve staggered six-year terms. The terms of three members begin on September 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

(c) A member of the advisory board may be removed from the advisory board pursuant to Texas Occupations Code §51.209, Advisory Boards; Removal of Advisory Board Member.

§116.13. Officers.

(a) The presiding officer of the commission shall designate a member of the advisory board as the presiding officer of the advisory board to serve for a term of one year.

(b) The presiding officer of the advisory board shall preside at all board meetings at which he or she is in attendance. The presiding officer of the advisory board may vote on any matter before the advisory board.

§116.14. Meetings.

(a) The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

(b) Meetings shall be announced and conducted under the provisions of the Open Meetings Act, Texas Government Code, Chapter 551.

(c) A quorum of the advisory board is necessary to conduct official business. A quorum is five members.

(d) Advisory board action shall require a majority vote of those members present and voting.

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SUBCHAPTER C. EDUCATION REQUIREMENTS

16 TAC §116.20, §116.21

The new rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

§116.20. Degrees and Course Work.

(a) The department shall accept as meeting licensure requirements baccalaureate and post-baccalaureate degrees and course work received from United States colleges or universities which held accreditation, at the time the degree was conferred or the course work was taken, from accepted regional educational accrediting associations as reported by the American Association of Collegiate Registrars and Admissions Officers.

(b) Degrees and course work received at foreign colleges and universities shall be acceptable only if such course work could be counted as transfer credit from accredited colleges or universities as reported by the American Association of Collegiate Registrars and Admissions Officers.

(c) Persons applying for licensure or provisional licensure must possess a baccalaureate or post-baccalaureate degree with a major course of study in human nutrition, food and nutrition, nutrition education dietetics, or food systems management.

(d) In place of the requirements in subsection (c), a person may have an equivalent major course of study defined as either:

(1) a baccalaureate or post-baccalaureate degree or course work including a minimum of thirty (30) semester hours in the following areas:

(A) twelve (12) semester hours must be specifically designed to train a person to apply and integrate scientific principles of human nutrition under different health, social, cultural, physical, psychological, and economic conditions to the proper nourishment, care, and education of individuals or groups throughout the life cycle;

(B) six (6) semester hours must be from human nutrition, food and nutrition, dietetics, or food systems management; and

(C) twelve (12) semester hours must be from four of the following three-hour courses:

(i) upper-division human nutrition related to disease;

(ii) upper-division food service systems management;

(iii) bio- or physiological chemistry, or advanced normal human nutrition;

(iv) food science; or

(v) upper-division nutrition education; or

(2) a baccalaureate or post-baccalaureate degree, including a major course of study meeting the minimum academic requirements to qualify for examination by the Commission on Dietetic Registration.

(e) The relevance to licensure of academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other means acceptable to the department.

(f) In the event that an academic deficiency is present, an applicant may have one year in which to complete the additional course work acceptable to the department before the application will be voided and the applicant will be required to reapply and to pay additional application fees.

(g) The semester hours may be part of a degree plan or in addition to a degree.

§116.21. Transcripts.

(a) Applicants must submit official transcripts of all relevant academic credit.

(b) The department will not accept a course for which an applicant's transcript indicates was not completed with a passing grade for credit.

(c) A course completed more than once within a five-year period will not be counted more than once to meet the academic requirements as specified in subsection (d).

(d) In evaluating transcripts, the department shall consider a quarter hour of academic credit as two-thirds of a semester hour.

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SUBCHAPTER D. EXPERIENCE REQUIREMENTS

16 TAC §116.30

The new rule is proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

§116.30. Preplanned Professional Experience Programs and Internships.

(a) Applicants for examination must have satisfactorily completed an approved preplanned professional experience program or internship in dietetics practice of not less than 900 hours under the supervision of a licensed dietitian or a registered dietitian.

(b) The preplanned professional experience program or internship must be approved by the department as prescribed under subsections (c) and (d).

(c) A preplanned professional experience program shall be:

(1) a preplanned professional experience program approved or recognized by the Commission on Dietetic Registration; or

(2) an individualized program, beyond the undergraduate level, that is planned and supervised by at least one licensed or registered dietitian, and is completed within three years after commencement of the program.

(d) An internship shall:

(1) be a dietetic internship, a coordinated undergraduate program in dietetics, or a professional experience program in dietetics; and

(2) have a signed statement submitted from the director of the program with the application.

(e) A person who participates in a department-approved preplanned professional experience program or internship must:

(1) be provisionally licensed under this chapter; and

(2) have a supervision agreement under this chapter.

(f) Documentation of the preplanned professional experience program or internship must be provided to the department on a department-approved form or in a manner prescribed by the department.

(g) Applicants who are registered in active status by the Commission on Dietetic Registration at the time of making application shall submit a photocopy of the registration card issued by the Commission on Dietetic Registration or submit the registration card number. The applicant's internship or preplanned professional experience program accepted for registration by the Commission on Dietetic Registration shall be acceptable for licensure by the department. No further proof of completion of an internship or preplanned professional experience program shall be required from the applicant.

(h) Provisional licensed dietitians shall be deemed to have met the academic requirements for admission into department approved preplanned professional experience and internship programs.

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SUBCHAPTER E. EXAMINATION REQUIREMENTS

16 TAC §§116.40 - 116.44

The new rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

§116.40. License Examination Requirements--General.

(a) Except as provided by subsection (c), an applicant must pass a license examination to qualify for a dietitian license under this chapter.

(b) Pursuant to Texas Occupations Code §701.253, the examination required for licensure as a Licensed Dietitian is the examination given by the Commission on Dietetic Registration.

(c) The department shall waive the examination requirement for an applicant who, at the time of application, is a dietitian registered by the Commission on Dietetic Registration and whose registration is in active status.

§116.41. License Examination Qualifications.

(a) An applicant must meet the education and experience requirements under Texas Occupations Code §701.254 in order to qualify to take the licensing examination.

(b) Pursuant to Texas Occupations Code §701.255, the department will review an applicant's application and other submitted documentation as prescribed under §116.50 to determine whether the applicant qualifies to take the examination.

(c) The department shall notify the applicant in writing of the department's determination of whether the applicant has qualified to take the examination. If the applicant has not qualified, the notice shall state the reasons for the applicant's failure to qualify.

(d) Upon notice of qualification, the applicant may take the examination given by the Commission on Dietetic Registration.

§116.42. License Examination Process.

(a) An applicant who wishes to take the examination is responsible for completing the examination registration form and submitting it with the appropriate fee to the Commission on Dietetic Registration (CDR) or its designee.

(b) Examinations administered by the CDR or its designee will be held in locations to be announced by the CDR or its designee.

(c) Examinations administered by the CDR or its designee shall be graded by the CDR or its designee. The passing grade is determined by the CDR.

(d) The CDR or its designee shall notify the applicant of the examination results. Applicants must provide documentation showing examination passage to the department.

§116.43. Examination Failures.

Pursuant to Texas Occupations Code §701.257, an applicant who fails the licensing examination three times must provide evidence to the department, in a manner prescribed by the department, that the applicant has successfully completed credit hours in the applicant's areas of weakness before the applicant may apply for reexamination.

§116.44. Texas Jurisprudence Examination.

(a) An applicant for licensure as a licensed dietitian or provisional licensed dietitian shall pass the Texas Jurisprudence Examination prescribed by the department.

(b) The Texas Jurisprudence Examination is separate from the license examination under §§116.40 - 116.43. The Texas Jurisprudence Examination tests the applicant's knowledge of the statute, rules and any other applicable law affecting the applicant's dietetics practice.

(c) The applicant must register online and pay the Texas Jurisprudence Examination fee to the third-party provider. The applicant does not need to qualify through the department to take the Texas Jurisprudence Examination.

(d) The applicant must successfully complete the Texas Jurisprudence Examination and submit a certificate of completion prior to receiving a license as a licensed dietitian or a provisional licensed dietitian.

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. LICENSED DIETITIANS

16 TAC §§116.50 - 116.53

The new rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

§116.50. Licensed Dietitians--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official department-approved forms.

(b) An applicant must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) the internship or preplanned professional experience program documentation form;

(3) official transcript(s) of all relevant college work showing successful completion of education requirements under §701.254(1);

(4) copy of registration issued by Commission of Dietetic Registration, if applicable;

(5) the form providing information regarding other state licenses, certificates or registrations that an applicant holds or held, if applicable;

(6) proof of successfully completing the Texas Jurisprudence Examination; and

(7) the fee required under §116.110.

(c) The applicant must successfully pass a criminal history background check.

(d) The applicant must meet the fitness requirements under §116.51.

(e) The department will notify the applicant pursuant to §116.41, regarding whether the applicant qualifies to take the license examination.

(f) Pursuant to Texas Occupations Code §701.151, the commission or the department shall deny the application for violation of the Act, this chapter, or a provision of the Code of Ethics in §116.105.

§116.51. Licensed Dietitians--Fitness of Applicants for Licensure.

(a) Pursuant to Texas Occupations Code §701.151(b)(3), this section applies to initial applications, renewal applications, and applications for reciprocal licenses.

(b) In determining the fitness of an applicant for licensure, the department shall consider the following:

(1) the skills and abilities of an applicant to provide adequate nutrition services; and

(2) the ethical behavior of an applicant in relationships with other professionals and clients.

(c) In determining the fitness of an applicant for licensure the department may request and consider any of the following:

(1) evaluations of supervisors or instructors;

(2) statements from persons submitting references for the applicant;

(3) evaluations of employers and/or professional associations;

(4) transcripts or findings from official court, hearing, or investigative proceedings; and

(5) any other information which the commission or department considers pertinent to determining the fitness of an applicant.

(d) The substantiation of any of the following items related to an applicant may be, as the department determines, the basis for the denial of licensure of the applicant:

(1) lack of the necessary skills and abilities to provide adequate nutrition services;

(2) misrepresentation of professional qualifications or affiliations with associations;

(3) misrepresentation of nutrition services, dietary supplements and the efficacy of nutrition services to clients;

(4) use of misleading or false advertising;

(5) violation of any provision of any federal or state statute relating to confidentiality of client communication and/or records;

(6) abuse of alcohol or drugs or the use of illegal drugs of any kind in any manner which detrimentally affects the provision of nutrition services;

(7) any misrepresentation in application or other materials submitted to the department; and

(8) the violation of any commission rule in effect at the time of application which is applicable to an unlicensed person.

§116.52. Licensed Dietitians--Issuing Licenses and Identification Cards.

(a) The department will send each applicant, who meets the requirements of the Act and this chapter, a license certificate and identification card containing the licensee's name, license number, and expiration date.

(b) Pursuant to Texas Occupations Code §701.351(b), any certificate or identification card issued by the department remains the property of the department and must be surrendered to the department on demand.

(c) The department may replace a lost, damaged, or destroyed license certificate or identification card upon a written request from the licensee and payment of the duplicate/replacement license fee under §116.110.

§116.53. Licensed Dietitians--License Term; Renewals.

(a) A license held by a licensed dietitian is valid for two years after the date of issuance and may be renewed biennially.

(b) Each licensee is responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification prior to the expiration date of the license shall not excuse failure to file for renewal or late renewal.

(c) To renew a license, a licensed dietitian must:

(1) submit a completed renewal application on a department-approved form;

(2) submit proof of successfully completing the Texas Jurisprudence Examination;

(3) successfully pass a criminal history background check;

(4) meet the fitness requirements under §116.51;

(5) complete twelve (12) hours of continuing education as required under §116.80;

(6) comply with the continuing education audit process described under §116.82, as applicable; and

(7) submit the fee required under §116.110.

(d) The commission or department shall renew the license of the licensee who has met all requirements for renewal, except as provided in the following subsections.

(e) Pursuant to Texas Occupations Code §701.151, the commission or department shall not renew the license of the licensee who is in violation of the Act, this chapter, or a provision of the Code of Ethics under §116.105 at the time of application for renewal.

(f) Pursuant to Texas Occupations Code §701.304, the commission or department may refuse to renew the license of a person who fails to pay an administrative penalty imposed under the Act unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

(g) A person whose license has expired may late renew the license in accordance with §60.31 and §60.83.

(h) A person whose license has expired may not use the title or represent or imply that he or she has the title of "licensed dietitian" or use the letters "LD", and may not use any facsimile of those titles in any manner.

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

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SUBCHAPTER G. PROVISIONAL LICENSED DIETITIANS

16 TAC §§116.60 - 116.65

The new rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

§116.60. Provisional Licensed Dietitians--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official department-approved forms.

(b) An applicant must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) official transcript(s) of all relevant college work showing successful completion of education requirements under §701.254(1);

(3) designation of the licensed dietitian that will supervise the provisional licensed dietitian;

(4) a signed and completed supervision agreement;

(5) proof of successfully completing the Texas Jurisprudence Examination; and

(6) the fee required under §116.110.

(c) The applicant must successfully pass a criminal history background check.

(d) The applicant must meet the fitness requirements under §116.61.

(e) Pursuant to Texas Occupations Code §701.151, the department shall deny the application for violation of the Act, this chapter, or a provision of the Code of Ethics in §116.105.

§116.61. Provisional Licensed Dietitians--Fitness of Applicants for Licensure.

(a) Pursuant to Texas Occupations Code §701.151(b)(3), this section applies to initial applications, renewal applications, and applications for reciprocal licenses.

(b) In determining the fitness of an applicant for licensure, the department shall consider the following:

(1) the skills and abilities of an applicant to provide adequate nutrition services; and

(2) the ethical behavior of an applicant in relationships with other professionals and clients.

(c) In determining the fitness of applicants for licensure the department may request and consider any of the following:

(1) evaluations of supervisors or instructors;

(2) statements from persons submitting references for the applicant;

(3) evaluations of employers and/or professional associations;

(4) transcripts or findings from official court, hearing, or investigative proceedings; and

(5) any other information which the commission or department considers pertinent to determining the fitness of an applicant.

(d) The substantiation of any of the following items related to an applicant may be, as the department determines, the basis for the denial of licensure of the applicant:

(1) lack of the necessary skills and abilities to provide adequate nutrition services;

(2) misrepresentation of professional qualifications or affiliations with associations;

(3) misrepresentation of nutrition services, dietary supplements and the efficacy of nutrition services to clients;

(4) use of misleading or false advertising;

(5) violation of any provision of any federal or state statute relating to confidentiality of client communication and/or records;

(6) abuse of alcohol or drugs or the use of illegal drugs of any kind in any manner which detrimentally affects the provision of nutrition services;

(7) any misrepresentation in application or other materials submitted to the department; and

(8) the violation of any commission rule in effect at the time of application which is applicable to an unlicensed person.

§116.62. Provisional Licensed Dietitians--Issuing Licenses and Identification Cards.

(a) The department will send each applicant, who meets the requirements of the Act and this chapter, a license certificate and identification card containing the licensee's name, license number, and expiration date.

(b) Pursuant to Texas Occupations Code §701.351(b), any certificate or identification card issued by the department remains the property of the department and must be surrendered to the department on demand.

(c) The department may replace a lost, damaged, or destroyed license certificate or identification card upon a written request from the licensee and payment of the duplicate/replacement license fee under §116.110.

§116.63. Provisional Licensed Dietitians--License Term; Renewals.

(a) A provisional license is valid for one year and may be renewed annually. A provisional license may only be renewed twice.

(b) Each licensee is responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification prior to the expiration date of the license shall not excuse failure to file for renewal or late renewal.

(c) To renew a license, a provisional licensed dietitian must:

(1) submit a completed renewal application on a department-approved form;

(2) submit a supervision agreement that is signed by the licensed dietitian and that indicates whether the supervisor and the provisional licensed dietitian have complied with §116.65;

(3) submit proof of successfully completing the Texas Jurisprudence Examination;

(4) successfully pass a criminal history background check;

(5) meet the fitness requirements under §116.61;

(6) complete six (6) hours of continuing education as required under §116.80;

(7) comply with the continuing education audit process described under §116.82, as applicable; and

(8) submit the fee required under §116.110.

(d) The commission or department shall renew the license of the licensee who has met all requirements for renewal, except as provided in the following subsections.

(e) Pursuant to Texas Occupations Code §701.151, the commission or department shall not renew the license of the licensee who is in violation of the Act, this chapter, or a provision of the Code of Ethics under §116.105 at the time of application for renewal.

(f) Pursuant to Texas Occupations Code §701.304, the commission or department may refuse to renew the license of a person who fails to pay an administrative penalty imposed under the Act unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

(g) A person whose license has expired may late renew the license in accordance with the procedures set out under §60.31 and §60.83 of this title.

(h) A person whose license has expired may not use the title or represent or imply that he or she has the title of "provisional licensed dietitian" or use the letters "PLD", and may not use any facsimile of those titles in any manner.

§116.64. Provisional Licensed Dietitians--Upgrading to Licensed Dietitian.

(a) The purpose of this section is to set out the procedure to upgrade from a provisional licensed dietitian to a licensed dietitian.

(b) The provisional licensed dietitian who has completed a department-approved preplanned professional experience program or internship in accordance with §116.30, must submit to the department a letter from the supervisor indicating the date the provisional licensed dietitian completed the program or internship.

(c) A provisional licensed dietitian who becomes registered by the Commission on Dietetic Registration must submit proof of current registration status.

(d) A provisional licensed dietitian must submit:

(1) a written request to upgrade on a department-approved form; and

(2) pay the required fee under §116.110 to upgrade to a licensed dietitian.

(e) The requirements of supervision under §116.65, shall continue until the provisional licensed dietitian becomes a licensed dietitian.

§116.65. Provisional Licensed Dietitians--Supervision.

(a) Supervision. The purpose of this section is to set out the nature and the scope of the supervision provided for a provisional licensed dietitian (PLD). The supervisor shall be a licensed dietitian.

(b) Supervision Agreement. The PLD must submit an agreement on a department-approved form to the department prior to the date that supervision is to begin. The agreement shall include:

(1) the name and signature of the supervisor and the name and signature of the PLD;

(2) the license number of the supervisor and the license number of the PLD if applicable;

(3) the primary location and address where nutrition services are to be rendered;

(4) a description of nutrition services to be rendered by the PLD;

(5) a statement that the supervisor and the PLD have read and agree to adhere to the requirements of the Act and this chapter; and

(6) the date that the supervisor and the PLD signed the agreement.

(c) Agreement Termination. The supervisor must submit a written notification of termination of supervision to the department and the PLD within fourteen (14) days of when supervision has ceased. The PLD shall make a good faith effort to ensure that the supervisor submits the appropriate notification. The notification of termination of supervision shall include:

(1) the name, license number, and signature of the supervisor and the name and license number of the PLD;

(2) a statement that supervision has terminated;

(3) the reason for termination;

(4) the date of termination of supervision; and

(5) a statement indicating whether the supervisor and the PLD have complied with the requirements of the Act and this chapter.

(d) Changes. Any change in the supervision agreement shall require submission of a new agreement.

(e) Requirements of supervision.

(1) The supervisor must have adequate training, knowledge, and skill to render competently any nutrition services that the PLD undertakes. The supervisor shall have discretion to refer the PLD for specific supervision from another licensed dietitian.

(2) The supervisor is responsible for determining the adequacy of the PLD's ability to perform the nutrition services.

(3) The supervisor may not supervise more than three (3) PLDs concurrently unless department approval is provided in advance.

(4) The PLD must clearly state the supervised status to patients, clients, and other interested parties and must provide the name, address, and telephone number of the supervisor.

(5) The supervisor may not be employed by the PLD, may not lease or rent space from the PLD, and must avoid any dual relationship with the PLD which could impair the supervisor's professional judgment.

(6) The supervisor must provide each PLD with no less than one hour of regularly scheduled one-to-one, face-to-face meetings weekly, regardless of the number of hours employed per week, or no less than four hours monthly. Group meetings are not a substitute for one-to-one meetings. A written record of the scheduled meetings must be maintained by the supervisor and include a summary of the PLD's work activities. The record shall be provided to the department on request.

(7) The supervisor must be available for discussion of any problems encountered by the PLD at reasonable times in addition to the scheduled meetings.

(8) The supervisor will provide an alternate licensed dietitian to provide supervision for the PLD in circumstances when the supervisor is not available for more than four continuous weeks.

(f) Payment. A PLD may not pay for supervision.

(g) Required supervisor. A PLD must have a supervising licensed dietitian at all times whether or not the PLD is actively employed.

(h) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

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SUBCHAPTER H. TEMPORARY LICENSED DIETITIANS

16 TAC §116.70

The new rule is proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

§116.70. Temporary Licensed Dietitians--Application and Eligibility Requirements; License Term.

(a) This section sets out the application procedures for a temporary license, which may be issued to a person licensed in good standing as a dietitian in another state, territory, or jurisdiction of the United States that has licensing requirements that are substantially equivalent to the requirements of the Act and this chapter.

(b) An applicant for a temporary license shall submit:

(1) a completed application on a department-approved form;

(2) a current copy of the law and rules of the other state, District of Columbia, or territory of the United States governing its licensing and regulation of dietitians;

(3) verification acceptable to the department that the applicant has passed the Commission of Dietetic Registration's examination or an examination offered by another state, the District of Columbia, or a territory of the United States for licensure as a dietitian;

(4) verification that the licensee is or will be supervised by a licensed dietitian in the same manner as set out in §116.65;

(5) a copy of the applicant's dietitian's license or certificate in the other state, District of Columbia, or territory of the United States and the name, address and telephone number of the licensing or certifying agency;

(6) a letter of good standing from the licensing or certifying agency in the other state, District of Columbia, or territory of the United States; and

(7) the fee required under §116.110.

(c) A temporary license is valid for 180 days from the date of issue, or until the date the department approves or denies the temporary licensee's application for a dietitian license, whichever is earlier. The department may extend the 180-day deadline to receive pending examination results.

(d) A temporary license may not be renewed. A person whose temporary license has expired is not eligible to receive another temporary license.

(e) The department shall issue a dietitian license to the holder of a temporary license after the temporary licensee meets all of the requirements for obtaining a dietitian license as set out in Subchapter F, Licensed Dietitians.

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SUBCHAPTER I. CONTINUING EDUCATION

16 TAC §§116.80 - 116.83

The new rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

§116.80. Continuing Education--General Requirements and Hours.

(a) Licensed dietitians and provisional licensed dietitians are required to take continuing education.

(b) A licensed dietitian must complete a minimum of twelve (12) continuing education hours during each two-year licensing period.

(c) A provisional licensed dietitian must complete a minimum of six (6) continuing education hours during each one-year licensing period.

(d) The hours must have been completed prior to the date of expiration of the license.

§116.81. Continuing Education--Approved Courses and Credits.

(a) The department has determined that to meet the continuing education requirements under the Act and this chapter a licensee must take the courses and hours offered or approved by the Commission on Dietetic Registration or its agents or a regionally accredited college or university.

(b) Continuing education undertaken by a licensee for renewal shall be acceptable if the experience falls in one or more of the following categories:

(1) academic courses related to dietetics;

(2) clinical courses related to dietetics;

(3) in-service educational programs, training programs, institutes, seminars, workshops and conferences in dietetics;

(4) instructing or presenting continuing education programs or activities that were offered or approved by the Commission on Dietetic Registration or its agents. Multiple presentations of the same programs only count once;

(5) acceptance and participation in poster sessions offered by a nationally recognized professional organization in the dietetics field or its state equivalent organization. Participation will be credited one hour for six (6) poster sessions with a maximum of two clock hours for twelve (12) poster sessions;

(6) books or articles published by the licensee in relevant professional books and referred journals. A minimum of three (3) continuing education hours will be credited for the publication; or

(7) self-study of professional materials that include self-assessment examinations. Six (6) hours maximum will be credited for self-study during the two-year licensure period.

(c) Activities unacceptable as continuing education for which the department may not grant continuing education credit are:

(1) education incidental to the regular professional activities of a licensee such as learning occurring from experience or research;

(2) professional organization activity such as serving on committees or councils or as an officer;

(3) any continuing education activity completed before or after the period of time described in subsection (a)(1);

(4) activities described in subsection (b), which have been completed more than once during the continuing education period;

(5) performance of duties that are routine job duties or requirements; or

(6) participation in conference exhibits.

(d) Continuing education experiences shall be credited as follows.

(1) Completion of course work at or through an accredited college or university shall be credited for each semester hour on the basis of two clock hours of credit for each semester hour successfully completed for credit or audit.

(2) An activity which meets the criteria of subsection (b)(2) or (3) shall be credited on a one-for-one basis with CPE as approved by the Academy.

(e) The Texas Jurisprudence Examination shall be required as follows:

(1) The licensee must successfully complete the Texas Jurisprudence Examination for renewal.

(2) Proof of successfully completing the examination must be retained by the licensee as required in §116.82.

(3) One hour of continuing education credit will be granted for successful completion of the Texas Jurisprudence Examination.

§116.82. Continuing Education--Records and Audits.

(a) The department shall employ an audit system for continuing education reporting. The license holder shall be responsible for maintaining a record of his or her continuing education experiences. The certificates, diplomas, or other documentation verifying earning of continuing education hours are not to be forwarded to the department at the time of renewal unless the license holder has been selected for audit.

(b) The audit process shall be as follows:

(1) The department shall select for audit a random sample of license holders for each renewal month. License holders will be notified of the continuing education audit when they receive their renewal documentation.

(2) If selected for an audit, the licensee shall submit copies of certificates, transcripts or other documentation satisfactory to the department, verifying the licensee's attendance, participation and completion of the continuing education. All documentation must be provided at the time of renewal.

(3) Failure to timely furnish this information or providing false information during the audit process or the renewal process are grounds for disciplinary action against the license holder.

(4) A licensee who is selected for continuing education audit may renew through the online renewal process. However, the license will not be considered renewed until required continuing education documents are received, accepted and approved by the department.

(5) Licenses will not be renewed until continuing education requirements have been met.

§116.83. Continuing Education--Failure to Complete.

(a) A person who fails to complete continuing education requirements for renewal holds an expired license and may not use the titles "licensed dietitian" or "provisional licensed dietitian."

(b) A person may renew late after all the continuing education requirements have been met.

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SUBCHAPTER J. RESPONSIBILITIES OF THE COMMISSION AND THE DEPARTMENT

16 TAC §116.90, §116.91

The new rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

§116.90. Registry.

(a) The department shall publish a registry of current license holders that includes the name, mailing address, and telephone number of current licensees.

(b) The registry will be available on the department's website.

§116.91. Rules.

(a) Pursuant to the authority under Texas Occupations Code §51.203, the commission shall adopt rules necessary to implement the Dietitians program. Pursuant to 16 Texas Administrative Code (TAC) §60.22, the department is authorized to propose rules.

(b) Pursuant to §51.2031, the department will not propose changes to standards of practice rules without being proposed by the advisory board.

(c) The commission will adopt rules governing changes to the standards of practice rules pursuant to §51.2031.

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SUBCHAPTER K. RESPONSIBILITIES OF THE LICENSEE AND CODE OF ETHICS

16 TAC §§116.100, 116.101, 116.103 - 116.105

The new rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

§116.100. Display of License.

(a) This section applies to licensed dietitians and provisional licensed dietitians.

(b) The license certificate must be displayed in an appropriate and public manner as follows.

(1) The license certificate shall be displayed in the primary office or place of employment of the licensee.

(2) In the absence of a primary office or place of employment, or when the licensee is employed at multiple locations, the licensee shall carry a current identification card.

(c) Neither the licensee nor anyone else shall display a photocopy of a license certificate or carry a photocopy of an identifica-

tion card in lieu of the original document. A file copy shall be clearly marked as a copy across the face of the document.

(d) Neither the licensee nor anyone else shall make any alteration on a license certificate or identification card.

(e) Pursuant to Texas Occupations Code §701.351(b), any certificate or identification card issued by the department remains the property of the department and must be surrendered to the department on demand.

§116.101. Changes of Name or Address.

(a) This section applies to licensed dietitians and provisional licensed dietitians.

(b) The licensee shall notify the department of changes in name or mailing address within thirty (30) days of such change(s) on a department-approved form or using a department-approved method.

(c) Notification of name changes must be mailed or faxed to the department and shall include a copy of a marriage certificate, court decree evidencing such change, or a social security card reflecting the new name. The licensee shall submit the duplicate/replacement fee required under §116.110.

§116.103. Disclosure.

(a) A licensee shall notify each client of the name, mailing address, telephone number, and website address of the department for the purpose of directing complaints to the department by providing notification:

(1) on each written contract for services of a licensee;

(2) on a sign prominently displayed in the primary place of business of each licensee; or

(3) in a bill for service provided by a licensee to a client or third party.

(b) A provisional licensed dietitian must include the name and telephone number of his or her supervisor in all advertising and announcements of services including business cards and applications for employment.

§116.104. Unlawful, False, Misleading, or Deceptive Advertising.

(a) A licensee shall use factual information to inform the public and colleagues of his/her services. A licensee shall not use advertising that is false, misleading, or deceptive or that is not readily subject to verification.

(b) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(1) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(2) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;

(3) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(4) contains a testimonial;

(5) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;

(6) advertises or represents that health care insurance deductibles or copayments may be waived or are not applicable to health care services to be provided if the deductibles or copayments are required;

(7) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or copayments are required;

(8) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or

(9) advertises or represents in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(c) As used in this section, a "health care professional" includes a licensed dietitian, provisional licensed dietitian, temporary licensed dietitian, or any other person licensed, certified, or registered by the state in a health-related profession.

§116.105. Code of Ethics.

(a) Professional representation and responsibilities.

(1) A licensee shall conduct himself/herself with honesty, integrity and fairness.

(2) A licensee shall not misrepresent any professional qualifications or credentials. A licensee shall not make any false or misleading claims about the efficacy of any nutrition services or dietary supplements.

(3) A licensee shall not permit the use of his/her name for the purpose of certifying that nutrition services have been rendered unless that licensee has provided or supervised the provision of those services.

(4) A licensee shall not promote or endorse products in a manner that is false or misleading.

(5) A licensee shall disclose to a client, a person supervised by the licensee, or an associate any personal gain or profit from any item, procedure, or service used by the licensee with the client, supervisee, or associate.

(6) A licensee shall maintain knowledge and skills required for professional competence. A licensee shall provide nutrition services based on scientific principles and current information. A licensee shall present substantiated information and interpret controversial information without bias.

(7) A licensee shall not abuse alcohol or drugs in any manner which detrimentally affects the provision of nutrition services.

(8) A licensee shall comply with the provisions of the Texas Controlled Substances Act, the Health and Safety Code, Chapter 481 and Chapter 483, relating to dangerous drugs; and any rules of the department or the Texas State Board of Pharmacy implementing those chapters.

(9) A licensee shall have the responsibility of reporting alleged misrepresentations or violations of commission rules to the department.

(10) A licensee shall comply with any order relating to the licensee which is issued by the commission or the executive director.

(11) A licensee shall not aid or abet the practice or misrepresentation of an unlicensed person when that person is required to have a license under the Act.

(12) A licensed dietitian shall supervise a provisional licensed dietitian in accordance with §116.65.

(13) A licensee shall not make any false, misleading, or deceptive claims in any advertisement, announcement, or presentation

relating to the services of the licensee, any person supervised by the licensee or any dietary supplement.

(14) A licensee shall conform to generally accepted principles and standards of dietetic practice which are those generally recognized by the profession as appropriate for the situation presented, including those promulgated or interpreted by or under the Academy or Commission on Dietetic Registration, and other professional or governmental bodies. A licensee shall recognize and exercise professional judgment within the limits of his/her qualifications and collaborate with others, seek counsel, or make referrals as appropriate.

(15) A licensee shall not interfere with an investigation or disciplinary proceeding by willful misrepresentation of facts to the department or its authorized representative or by the use of threats or harassment against any person.

(16) A licensee shall report information if required by the following statutes:

(A) Texas Family Code, Chapter 261, concerning abuse or neglect of minors; or

(B) Texas Human Resources Code, Chapter 48, concerning abuse, neglect, or exploitation of elderly or disabled persons.

(b) Professional relationships.

(1) A licensee shall make known to a prospective client the important aspects of the professional relationship including fees and arrangements for payment which might affect the client's decision to enter into the relationship. A licensee shall bill a client or a third party in the manner agreed to by the licensee and in accordance with state and federal law.

(2) A licensee shall not receive or give a commission or rebate or any other form of remuneration for the referral of clients for professional services.

(3) A licensee shall disclose to clients any interest in commercial enterprises which the licensee promotes for the purpose of personal gain or profit.

(4) A licensee shall take reasonable action to inform a client's physician and any appropriate allied health care provider in cases where a client's nutritional status indicates a change in medical status.

(5) A licensee shall provide nutrition services without discrimination based on race, creed, gender, religion, national origin, or age.

(6) A licensee shall not violate any provision of any federal or state statute relating to confidentiality of client communication and/or records. A licensee shall protect confidential information and make full disclosure about any limitations on his/her ability to guarantee full confidentiality.

(7) A licensee shall not engage in sexual contact with a client. The term "sexual contact" means any type of sexual behavior described in the Texas Penal Code, §21.01, and includes sexual intercourse. A licensee shall not engage in sexual harassment in connection with professional practice.

(8) A licensee shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from the services provided.

(9) A licensee shall not provide services to a client or the public if by reason of any mental or physical condition of the licensee, the services cannot be provided with reasonable skill or safety to the client or the public.

(10) A licensee shall not provide any services which result in mental or physical injury to a client or which create an unreasonable risk that the client may be mentally or physically harmed.

(11) A licensee shall provide sufficient information to enable clients and others to make their own informed decision regarding nutritional services.

(12) A licensee shall be alert to situations that might cause a conflict of interest or have the appearance of a conflict. A licensee shall make full disclosure when a real or potential conflict of interest arises.

(c) A licensed dietitian shall supervise a provisional licensed dietitian or a temporary licensed dietitian for whom the licensee has assumed supervisory responsibility.

(d) On the written request of a client, a client's guardian, or a client's parent, if the client is a minor, a licensee shall provide, in plain language, a written explanation of the charges for client nutrition services previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.

(e) A licensee may not persistently or flagrantly overcharge or overtreat a client.

(f) Sanctions. A licensee shall be subject to disciplinary action by the commission or department if under the Crime Victims Compensation Act, Texas Code of Criminal Procedure, Article 56.31, the licensee is issued a public letter of reprimand, is assessed a civil penalty by a court, or has been convicted and ordered to pay court costs under the Crime Victims Compensation Act, Texas Code of Criminal Procedure, Chapter 56, Subchapter B, Article 56.55.

(g) Applicants. A violation of any provision of this section by a person who is an applicant or who subsequently applies for a license (even though the person was not a licensee at the time of the violation) may be a basis for disapproval of the application.

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SUBCHAPTER L. FEES

16 TAC §116.110

The new rule is proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

§116.110. Fees.

(a) All fees paid to the department are nonrefundable.

(b) Licensed Dietitian Fees:

(1) Initial application fee (includes two-year initial license)--$108;

(2) License fee for upgrade of provisional licensed dietitian to licensed dietitian--$20;

(3) Renewal application fee (for two-year license)--$90; and

(4) Application processing fee for preplanned professional experience approval--$350.

(c) Provisional Licensed Dietitian Fees:

(1) Initial application fee (includes one-year initial license)--$54;

(2) License fee for upgrade of provisional licensed dietitian to licensed dietitian--$20;

(3) Renewal application fee (for one-year license; may only be renewed twice)--$45; and

(4) Application processing fee for preplanned professional experience approval--$350.

(d) Temporary Licensed Dietitian Fees. Initial application fee (includes initial license)--$54.

(e) A duplicate/replacement fee for licenses issued under this chapter is $25.

(f) Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(g) A dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).

(h) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

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SUBCHAPTER M. COMPLAINTS

16 TAC §116.120

The new rule is proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

§116.120. Complaints Regarding Standard of Care.

The commission will adopt rules related to handling complaints regarding standard of care pursuant to Texas Occupations Code §51.2031.

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 N. ENFORCEMENT PROVISIONS

16 TAC §§116.130 - 116.132

The new rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

§116.130. Administrative Penalties and Sanctions.

If a person or entity violates any provision of Texas Occupations Code, Chapters 51 or 701, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapter 51 and 701 and any associated rules.

§116.131. Enforcement Authority.

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 701 and any associated rules may be used to enforce Texas Occupations Code, Chapter 701 and this chapter.

§116.132. License Surrender.

Pursuant to Texas Occupations Code §701.351(b), a license issued by the department is the property of the department and shall be surrendered on demand.

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 O. THE DIETETIC PROFESSION

16 TAC §§116.140 - 116.142

The new rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

§116.140. Areas of Expertise.

The profession of dietetics includes six primary areas of expertise: clinical, educational, management, consultation, community and research; and includes without limitation the development, management, and provision of nutrition services, as follows:

(1) planning, developing, controlling, and evaluating food service systems;

(2) coordinating and integrating clinical and administrative aspects of dietetics to provide quality nutrition care;

(3) establishing and maintaining standards of food production, service, sanitation, safety, and security;

(4) planning, conducting, and evaluating educational programs relating to nutrition care;

(5) developing menu patterns and evaluating them for nutritional adequacy;

(6) planning layout designs and determining equipment requirements for food service facilities;

(7) developing specifications for the procurement of food and food service equipment and supplies;

(8) developing and implementing plans of nutrition care for individuals based on assessment of nutrition needs;

(9) counseling individuals, families, and groups in nutrition principles, dietary plans, and food selection and economics;

(10) communicating appropriate diet history and nutrition intervention data through medical record systems;

(11) participating with physicians and allied health personnel as the provider of nutrition care;

(12) planning, conducting or participating in, and interpreting, evaluating, and utilizing pertinent current research related to nutrition care;

(13) providing consultation and nutrition care to community groups and identifying and evaluating needs to establish priorities for community nutrition programs;

(14) publishing and evaluating technical and lay food and nutrition publications for all age, socioeconomic, and ethnic groups; and

(15) planning, conducting, and evaluating dietary studies and participating in nutrition and epidemiologic studies with a nutrition component.

§116.141. Provider of Nutrition Services.

(a) A person licensed by the department is designated as a health care provider of nutrition services.

(b) A licensed dietitian, acting within the scope of his or her license and consistent with medical direction or authorization as provided in this section, may accept, transcribe into a patient's medical record or transmit verbal or electronically-transmitted orders, including medication orders, from a physician to other authorized health care professionals relating to the implementation or provision of medical nutrition therapy and related medical protocols for an individual patient or group of patients.

(1) In a licensed health facility, the medical direction or authorization shall be provided, as appropriate, through a physician's order, or a standing medical order, or standing delegation order, or medical protocol issued in accordance with Texas Occupations Code, Chapter 157, Subchapter A, and rules adopted by the Texas Medical Board implementing the subchapter.

(2) In a private practice setting, the medical direction or authorization shall be provided, as appropriate, through the physician's order, standing medical order, or standing delegation order of a referring physician, in accordance with Texas Occupations Code, Chapter 157, Subchapter A, and rules adopted by the Texas Medical Board implementing the subchapter.

(c) A licensed dietitian, acting within the scope of his or her license and consistent with medical direction or authorization as provided in this section, may order medical laboratory tests relating to the implementation or provision of medical nutrition therapy and related medical protocols for individual patients or groups of patients.

(1) In a licensed health facility, the medical direction or authorization shall be provided, as appropriate, through a physician's order, or a standing medical order, or standing delegation order, or medical protocol, issued in accordance with Texas Occupations Code, Chapter 157, Subchapter A, and rules adopted by the Texas Medical Board implementing the subchapter.

(2) In a private practice setting, the medical direction or authorization shall be provided through the physician's order, standing medical order, or a standing delegation order of the referring physician, in accordance with Texas Occupations Code, Chapter 157, Subchapter A, and rules adopted by the Texas Medical Board implementing the subchapter.

§116.142. Licensed Dietitians Providing Diabetes Self-Management Training.

(a) This section implements the Insurance Code, Title 8, Subtitle E, Chapter 1358, §1358.055.

(b) Diabetes self-management training. Diabetes self-management training covers the following training:

(1) training provided to a qualified enrollee after the initial diagnosis of diabetes in the care and management of that condition,

including nutrition counseling and proper use of diabetes equipment and supplies;

(2) additional training authorized on the diagnosis of a physician or other health care practitioner of a significant change in the qualified enrollee's symptoms or condition that requires changes in the qualified enrollee's self-management regimen; and

(3) periodic or episodic continuing education training when prescribed by an appropriate health care practitioner as warranted by the development of new techniques and treatments for diabetes.

(c) Providing diabetes self-management training as a member of a multi-disciplinary team.

(1) Prior to beginning to provide diabetes self-management training as member of a multi-disciplinary team under Insurance Code, Title 8, Subtitle E, Chapter 1358, §1358.055(c)(2), a licensed dietitian must complete at least six (6) hours of continuing education in diabetes-specific or diabetes-related topics within the previous two years.

(2) Thereafter, to remain qualified to continue to provide such services, a licensed dietitian shall complete at least six (6) hours of continuing education biennially in diabetes-specific or diabetes-related topics.

(3) A licensed dietitian who is not a Certified Diabetes Educator and who is providing diabetes self-management training as a member of a multi-disciplinary team under Insurance Code, Title 8, Subtitle E, Chapter 1358, §1358.055(c)(2), shall confine his or her professional services to nutrition education and/or counseling, lifestyle modifications, the application of self-management skills, reinforcing diabetes self-management training, and other acts within the scope of his or her professional education and training which are conducted under the supervision of the coordinator of the multi-disciplinary team.

(d) Providing the nutrition component of diabetes self-management training.

(1) Prior to beginning to provide the nutrition component of diabetes self-management training under Insurance Code, Title 8, Subtitle E, Chapter 1358, §1358.055(c)(4), a licensed dietitian must complete at least six (6) hours of continuing education in diabetes-specific or diabetes-related topics within the previous two years.

(2) Thereafter, to remain qualified to continue to provide such services, a licensed dietitian shall show proof to the department completion of at least six (6) hours of continuing education biennially in diabetes-specific or diabetes-related topics.

(e) Continuing education. The continuing education completed under this section shall meet the requirements described in Subchapter I, Continuing Education. The continuing education completed under this section may be part of the credits required for renewal of a license.

(f) Submission of continuing education to the department. Upon written request by the department, the licensed dietitian shall submit to the department proof of completion of the continuing education completed under this section. The licensed dietitian shall submit the proof of completion in a manner and a timeframe acceptable to the department.

(g) Provisional Licensed Dietitians. A provisional licensed dietitian shall not provide diabetes self-management training under these rules.

(h) Certified Diabetes Educator. This section does not apply to a licensed dietitian who is a diabetes educator certified by the National Certification Board for Diabetes Educators.

(i) Non-application of rules. This section does not pertain to or restrict a licensed dietitian who does not qualify under this section from providing the nutrition component of diabetes self-management training within the scope of the license issued by the department, to a person:

(1) who is not a qualified enrollee as defined in the Insurance Code, Title 8, Subtitle E, Chapter 1358, §1358.051;

(2) who does not intend to seek payment for or reimbursement for diabetes self-management training; or

(3) without the written order of a licensed physician or other healthcare practitioner.

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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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: January 31, 2016
For further information, please call: (512) 463-8179

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PART 8. TEXAS RACING COMMISSION

CHAPTER 301. DEFINITIONS

16 TAC §301.1

The Texas Racing Commission proposes an amendment to 16 TAC §301.1, concerning Definitions. The proposed amendment removes the definition for "historical racing". This change is proposed in conjunction with the proposed repeal of rules authorizing and regulating historical racing under Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register.* Since this section lists the definitions in alphabetical order, the amendment renumbers subsequent definitions in order to accommodate the change.

Chuck Trout, Executive Director, has determined that for the first five-year period that this amendment, as well as the repeal of rules authorizing and regulating historical racing, is in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

Mr. Trout has determined that for each year of the first five years that this amendment, as well as the repeal of rules authorizing and regulating historical racing, is in effect the anticipated public benefit will be to bring the rules into conformity with the decision by the 261st District Court of Travis County that the rules relating to historical racing exceeded the Commission's authority.

The amendment will have no adverse economic effect on small or micro-businesses since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

The amendment will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment is proposed 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 implements Texas Revised Civil Statutes Annotated, Article 179e.

§301.1. Definitions.

(a) (No change.)

(b) The following words and terms, when used in this part, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (31) (No change.)

~~[(32) Historical racing--to present for pari-mutuel wagering, through a totalisator system that meets the requirements of Chapter 321, Subchapter F of this title (relating to Regulation of Historical Racing), a previously run horse or greyhound race that was:]~~

~~[(A) authorized by the commission or by another racing jurisdiction;]~~

~~[(B) concluded with official results and without scratches, disqualifications or dead-heat finishes; and]~~

~~[(C) recorded by video, film, electronic, or similar means of preservation.]~~

(32) [~~(33)~~] Horse--an equine of any breed, including a stallion, gelding, mare, colt, filly, or ridgling.

(33) [~~(34)~~] Horse Race--a running contest between horses for entry fees, purse, prize, or other reward, including the following:

(A) Claiming race--a race in which a horse may be claimed in accordance with the Rules.

(B) Derby race--a race in which the first condition of eligibility is to be three years old.

(C) Futurity race--a race in which the first condition of eligibility is to be two years old.

(D) Guaranteed race--a race for which the association guarantees by its conditions a specified purse, which is the limit of its liability.

(E) Handicap race--a race in which the weights to be carried by the entered horses are adjusted by the racing secretary for the purpose of equalizing their respective chances of winning.

(F) Match race--a race between only two horses that are owned by different owners.

(G) Maturity race--a race in which the first condition of eligibility is to be four years of age or older.

(H) Optional claiming race--a claiming race in which there is an option to have horses entered to be claimed for a stated price or not eligible to be claimed.

(I) Progeny race--a race restricted to the offspring of a specific stallion or stallions.

(J) Purse or overnight race--a race for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(K) Stakes race--a race to which nominators of the entries contribute to a purse.

(L) Starter race--an overnight race under allowance or handicap conditions, restricted to horses which have previously started for a designated claiming price or less, as stated in the conditions of the race.

(M) Walkover race--a stakes race in which only one horse starts or all the starters are owned by the same interest.

(N) Weight for age race--a race in which weights are assigned in keeping with the scale of weights in these rules.

(34) [~~(35)~~] In today horse--a horse that is in the body of a race program which is entered into a race on the next consecutive race day.

(35) [~~(36)~~] Kennel area--an area on association grounds for the boarding or training of greyhounds.

(36) [~~(37)~~] Lead out--an individual who handles a greyhound from the lockout kennel to the starting box.

(37) [~~(38)~~] Locked in the gate--a horse or greyhound that is prevented from leaving the starting gate or box due to the failure of the front door of the gate or box to open simultaneously with the other doors.

(38) [~~(39)~~] Lure--a mechanical apparatus at a greyhound racetrack consisting of a stationary rail installed around the track, a motorized mechanism that travels on the rail, and a pole that is attached to the mechanism and extends over the track, and to which a decoy is attached.

(39) [~~(40)~~] Maiden--a horse or greyhound that has never won a race at a recognized race meeting authorized by the Commission or by another racing jurisdiction.

(40) [~~(41)~~] Minus pool--a pool in which there are insufficient net proceeds to pay the minimum price to holders of the winning tickets.

(41) [~~(42)~~] Mutuel field--a group of horses joined as a single betting interest in a race due to the limited numbering capacity of the totalisator.

(42) [~~(43)~~] No race--a race that is canceled after being run due to a malfunction of the starting gate or box or any other applicable reason as determined by the Rules.

(43) [~~(44)~~] Nominator--the person in whose name a horse or greyhound is entered for a race.

(44) [~~(45)~~] Occupational licensee--an individual to whom the Commission has issued a license to participate in racing with pari-mutuel wagering.

(45) [~~(46)~~] Odds--a number indicating the amount of profit per dollar wagered to be paid to holders of winning pari-mutuel tickets.

(46) [~~(47)~~] Off time--the moment when, on signal from the starter, the horses or greyhounds break from the starting gate or box and run the race.

(47) [~~(48)~~] Paddock--the area in which horses or greyhounds gather immediately before a race.

(48) [~~(49)~~] Patron--an individual present on association grounds during a race meeting who is eligible to wager on the racing.

(49) [~~(50)~~] Pecuniary interest--includes a beneficial ownership interest in an association, but does not include bona fide indebtedness or a debt instrument of an association.

(50) [~~(51)~~] Performance--the schedule of horse or greyhound races run consecutively as one program. A greyhound performance consists of fifteen or fewer races unless approved by the executive secretary.

(51) [~~(52)~~] Photofinish--the system of recording pictures or images of the finish of a race to assist in determining the order of finish.

(52) [~~(53)~~] Place--to finish second in a race.

(53) [~~(54)~~] Post position--the position assigned to a horse or greyhound in the starting gate or box.

(54) [~~(55)~~] Post time--the time set for the arrival at the starting gate or boxes by the horses or greyhounds in a race.

(55) [~~(56)~~] Purse--the cash portion of the prize for a race.

(56) [~~(57)~~] Race date--a date on which an association is authorized by the Commission to conduct races.

(57) [~~(58)~~] Race day--a day in which a numerical majority of scheduled races is conducted and is a part of the association's allocated race days.

(58) [~~(59)~~] Race meeting--the specified period and dates each year during which an association is authorized to conduct racing and/or pari-mutuel wagering by approval of the Commission.

(59) [~~(60)~~] Racetrack facility--the buildings, structures and fixtures located on association grounds used by an association to conduct horse or greyhound racing.

(60) [~~(61)~~] Racetrack official--an individual appointed or approved by the Commission to officiate at a race meeting.

(61) [~~(62)~~] Racing judge--the executive racing official at a greyhound track.

(62) [~~(63)~~] Reasonable belief--a belief that would be held by an ordinary and prudent person in the same circumstances as the actor.

(63) [~~(64)~~] Recognized race meeting--a race meeting held under the sanction of a turf authority.

(64) [~~(65)~~] Refunded ticket--a pari-mutuel ticket that has been refunded for the value of a wager that is no longer valid.

(65) [~~(66)~~] Rule off--to bar an individual from the enclosure of an association and to deny all racing privileges to the individual.

(66) [~~(67)~~] Rules--the rules adopted by the Texas Racing Commission found in Title 16, Part VIII of the Texas Administrative Code.

(67) [~~(68)~~] Schooling race--a practice race conducted under actual racing conditions but for which wagering is not permitted.

(68) [~~(69)~~] Scratch--to withdraw an entered horse or greyhound from a race after the closing of entries.

(69) [~~(70)~~] Scratch time--the closing time set by an association for written requests to withdraw from a race.

(70) [~~(71)~~] Show--to finish third in a race.

(71) [~~(72)~~] Specimen--a bodily substance, such as blood, urine, or saliva, taken for analysis from a horse, greyhound, or individual in a manner prescribed by the Commission.

(72) [~~(73)~~] Stakes payments--the fees paid by subscribers in the form of nomination, entry, or starting fees to be eligible to participate.

(73) [~~(74)~~] Stallion owner--a person who is owner of record, at the time of conception, of the stallion that sired the accredited Texas-bred horse.

(74) [~~(75)~~] Starter--a horse or greyhound entered in a race when the doors of the starting gate or box open in front of the horse or greyhound at the time the official starter dispatches the horses or greyhounds.

(75) [~~(76)~~] Straight pool--a mutuel pool that involves wagers on a horse or greyhound to win, place, or show.

(76) [~~(77)~~] Subscription--money paid to nominate, enter, or start a horse or greyhound in a stakes race.

(77) [~~(78)~~] Tack room--a room in the stable area of a horse racetrack in which equipment for training and racing the horses is stored.

(78) [~~(79)~~] Totalisator--a machine or system for registering and computing the wagering and payoffs in pari-mutuel wagering.

(79) [~~(80)~~] Tote board--a facility at a racetrack that is easily visible to the public on which odds, payoffs, advertising, or other pertinent information is posted.

(80) [~~(81)~~] Tote room--the room in which the totalisator equipment is maintained.

(81) [~~(82)~~] Tout--an individual licensed to furnish selections on a race in return for a set fee.

(82) [~~(83)~~] Trial--a race designed primarily to determine qualifiers for finals of a stakes race.

(83) [~~(84)~~] Uplink--an earth station broadcasting facility, whether mobile or fixed, which is used to transmit audio-visual signals and/or data emanating from a sending racetrack, and includes the electronic transfer of received signals from the receiving antenna to TV monitors within the receiving location.

(84) [~~(85)~~] Weigh in--the process by which a jockey is weighed after a race or by which a greyhound is weighed before being placed in the lockout kennel.

(85) [~~(86)~~] Weighing in weight--the weight of a greyhound on weighing in to the lockout kennel.

(86) [~~(87)~~] Weigh out--the process by which a jockey or greyhound is weighed before a race.

(87) [~~(88)~~] Weighing out weight--the weight of a greyhound on weighing out of the lockout kennel immediately before post time for the race in which the greyhound is entered.

(88) [~~(88)~~] Win--to finish first in a race.

(89) [~~(90)~~] Winner--

(A) for horse racing, the horse whose nose reaches the finish line first, while carrying the weight of the jockey or is placed first through disqualification by the stewards; and

(B) for greyhound racing, the greyhound whose muzzle, or if the muzzle is lost or hanging, whose nose reaches the finish line first or is placed first through disqualification by the judges.

(90) [~~(91)~~] Active license--a racetrack license designated by the commission as active.

(91) [~~(92)~~] Inactive license--a racetrack license designated by the commission as inactive.

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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Mark Fenner
General Counsel
Texas Racing Commission
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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 proposes amendments to 16 TAC §303.31, concerning the regulation of racing, and §303.42, concerning the approval of charity race days. These changes are proposed in conjunction with the proposed repeal of rules authorizing and regulating historical racing under Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register.*

The proposed amendments restore the rules to the language that existed prior to the adoption of the historical racing rules. To accomplish this goal, the amendment to §303.31 reinserts the phrase "live and simulcast" into the rule and the amendments to §303.42 eliminate all provisions and references related to historical racing.

Chuck Trout, Executive Director, has determined that for the first five-year period that these amendments, as well as the repeal of rules authorizing and regulating historical racing, are in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

Mr. Trout has determined that for each year of the first five years that these amendments, as well as the repeal of rules authorizing and regulating historical racing, are in effect the anticipated public benefit will be to bring the rules into conformity with the decision by the 261st District Court of Travis County that the rules relating to historical racing exceeded the Commission's authority.

The amendments will have no adverse economic effect on small or micro-businesses since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County, therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

The amendments will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

All comments or questions regarding the proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment to §303.41 is proposed 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 proposed 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 race days.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

§303.31. Regulation of Racing.

The commission shall regulate each live and simulcast race meeting conducted in this state and supervise the operation of racetracks and the persons other than patrons who participate in a race meeting.

§303.42. Approval of Charity Race Days.

(a) An association shall conduct charity days as required by the Act. A greyhound association shall conduct at least five charity race days each year. A Class 1 or Class 2 horse racetrack [~~that is not conducting historical racing~~] shall conduct at least two and not more than five charity race days each year. [~~A Class 1 or Class 2 horse racetrack that is conducting historical racing shall conduct at least three and not more than five charity race days each year.~~]

(b) An association shall apply to the commission not later than July 1 of each year for charity race dates to be conducted in the next calendar year. [~~During each application period in which an association applies for live race dates, the association shall also apply for charity~~

~~race dates as necessary to comply with subsection (a) of this section.~~] The application must be in writing and contain:

(1) - (4) (No change.)

(c) An association shall pay to the charity at least 2.0% of the total pari-mutuel handle generated at the association's racetrack on live races and imported simulcast races on the charity race day.

(d) [~~Charities.~~]

[~~(1)~~] At least one of the charity days must be conducted for a [~~percent of the pari-mutuel handle from live racing and simulcasting on charity racing days shall be contributed to a~~] charity that directly benefits the persons who work in the stable or kennel area of the racetrack[. At least one of the charity days must be conducted for[~~, and at least one percent shall be contributed to~~] a charity that primarily benefits research into the health or safety of race animals.

[~~(2) For a horse racing association conducting historical racing, at least 1.5% of the pari-mutuel handle from historical racing on charity racing days shall be contributed to a charity that directly funds veterinary research beneficial to promoting the health and soundness of horses; and at least one-half of one percent of the pari-mutuel handle from historical racing on charity racing days shall be contributed to a charity that facilitates youth participation in equestrian sports and activities.~~]

[~~(3) For a greyhound association conducting historical racing, at least two percent of the pari-mutuel handle from historical racing on charity racing days shall be contributed to a charity that provides for the medical care and rehabilitation of injured greyhounds.~~]

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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Mark Fenner
General Counsel
Texas Racing Commission
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CHAPTER 307. PROCEEDINGS BEFORE THE COMMISSION

SUBCHAPTER C. PROCEEDINGS BY STEWARDS AND RACING JUDGES

16 TAC §307.62

The Texas Racing Commission proposes an amendment to 16 TAC §307.62. The section relates to disciplinary actions against occupational licensees. The proposed amendment extends the period of time in which a summary suspension hearing may be held from three days to seven days. The current rule authorizes boards of stewards or racing judges to summarily suspend a license if a licensee's actions constitute an immediate danger to the public health, safety or welfare. The rule also provides that the licensee is entitled to a hearing on the suspension not later than three calendar days after the license is suspended. However, current racing schedules, which may call for a little as two race days in a week, are so limited as to make the three day requirement impractical. Extending the three-day period for a summary suspension hearing to seven days will ensure that the licensee has an adequate opportunity to request a hearing and that both the Commission and the licensee have an adequate opportunity to prepare for the hearing.

Chuck Trout, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for local government as a result of enforcing the new rule. The rule will have positive fiscal implications for state government by reducing the number of hours that the Commission has to pay staff to conduct summary suspension hearings when they would otherwise not be scheduled to work.

Mr. Trout has determined that for each year of the first five years that the new rule is in effect the anticipated public benefit will be to reduce costs to the state and to provide additional time for both staff and the licensee to prepare for a summary suspension hearing.

The amendment will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.

The amendment will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act, and §3.16, which authorizes the stewards or judges to summarily suspend a licensee.

The amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

§307.62. Disciplinary Action

(a) - (h) (No change.)

(i) Summary Suspension. If the stewards or racing judges determine that a licensee's actions constitute an immediate danger to the public health, safety, or welfare, the stewards or racing judges may enter a ruling summarily suspending the license, without a prior hearing. A summary suspension takes effect immediately on issuance of the ruling. If the stewards or racing judges suspend a license under this subsection, the licensee is entitled to a hearing on the suspension not later than seven [~~three~~] calendar days after the day the license is suspended. The licensee may waive his or her right to a hearing on the summary suspension within the seven [~~three~~]-day period.

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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Mark Fenner
General Counsel
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CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

The Texas Racing Commission proposes 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. These changes are proposed in conjunction with the proposed repeal of rules authorizing and regulating historical racing under Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register.*

The proposed amendments to §§309.8, 309.297, 309.299, and 309.361 restore the rules to the language that existed prior to the adoption of the historical racing rules.

Chuck Trout, Executive Director, has determined that for the first five-year period that these amendments, as well as the repeal of rules authorizing and regulating historical racing, are in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

Mr. Trout has determined that for each year of the first five years that these amendments, as well as the repeal of rules authorizing and regulating historical racing, are in effect the anticipated public benefit will be to bring the rules into conformity with the decision by the 261st District Court of Travis County that the rules relating to historical racing exceeded the Commission's authority.

The amendments will have no adverse economic effect on small or micro-businesses since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County, therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County and because non-operating racetracks have no employees.

The amendments will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

All comments or questions regarding the proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

SUBCHAPTER A. RACETRACK LICENSES

DIVISION 1. GENERAL PROVISIONS

16 TAC §309.8

The amendments are proposed 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 amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

§309.8. Racetrack License Fees.

(a) Purpose of Fees. An association shall pay a license fee to the Commission to pay the Commission's costs to administer and enforce the Act, and to regulate, oversee, and license live and simulcast racing [~~and pari-mutuel wagering~~] at racetracks.

(b) Annual License Fee.

(1) (No change.)

(2) An association that is conducting live racing[~~, historical racing~~] or simulcasting shall pay its annual license fee by remitting to the Commission 1/12th of the fee on the first business day of each month.

(3) An association that is not conducting live racing[~~, historical racing~~] or simulcasting shall pay its annual license fee in four equal installments on September 1, December 1, March 1, and June 1 of each fiscal year.

(c) (No change.)

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

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SUBCHAPTER C. HORSE RACETRACKS

DIVISION 4. OPERATIONS

16 TAC §309.297, §309.299

The amendments are proposed 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 amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

§309.297. Purse Accounts.

(a) All money required to be set aside for purses, whether from wagering on live races or on simulcast wagering, are trust funds held by an association as custodial trustee for the benefit of horsemen. No more than three business days after the end of each week's wagering, the association shall deposit the amount set aside for purses into purse accounts maintained as trust accounts for the benefit of horsemen by breed by the horsemen's organization in one or more federally or privately insured depositories.

(b) - (f) (No change.)

§309.299. Horsemen's Representative.

(a) Findings. The Commission finds a need for horse owners and trainers to negotiate and covenant with associations as to the conditions of live race meetings, the distribution of purses not governed by statute, simulcast transmission and reception, and other matters relating to the welfare of the owners and trainers participating in live racing at an association. To ensure the uninterrupted, orderly conduct of racing in this state, the Commission shall recognize one organization to represent horse owners and trainers on matters relating to the conduct of live racing and simulcasting at Texas racetracks.

(b) (No change.)

(c) Authority and Responsibilities.

(1) An organization recognized under this section shall negotiate with each association regarding the association's live racing program, including but not limited to the allocation of purse money to various live races, the exporting of simulcast signals, [~~issues related to historical racing,~~] and the importing of simulcast signals during live race meetings.

(2) - (6) (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.

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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 D. GREYHOUND RACETRACKS
DIVISION 2. OPERATIONS

16 TAC §309.361

The amendment is proposed 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 amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

§309.361. Greyhound Purse Account and Kennel Account.

(a) Greyhound Purse Account.

(1) All money required to be set aside for purses, whether from wagering on live races or simulcast races, are trust funds held by an association as custodial trustee for the benefit of kennel owners and greyhound owners. No more than three business days after the end of each week's wagering, the association shall deposit the amount set aside for purses into a greyhound purse account maintained in a federally or privately insured depository.

(2) (No change.)

(b) (No change.)

(c) The Texas Greyhound Association ("TGA") shall negotiate with each association regarding the association's live racing program, including but not limited to the allocation of purse money to various live races, the exporting of simulcast signals, [~~issues related to historical racing,~~] and the importing of simulcast signals during live race meetings.

(d) - (f) (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.

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SUBCHAPTER B. OPERATIONS OF RACETRACKS
DIVISION 2. FACILITIES AND EQUIPMENT

16 TAC §309.126, §309.127

The Texas Racing Commission proposes amendments to 16 TAC §309.126, relating to videotape equipment, and §309.127, relating to the maintenance of negatives and videotapes. The proposed amendments update the rules to reflect current digital technology in use at the racetracks. The amendment to §309.126 would replace the word "videotape" with "video recording" in several instances. The amendment to §309.127 also replaces the word "videotape" with "video recording" in several instances, and in addition allows an association to provide a digital image, instead of a print, from a negative.

Chuck Trout, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing the new rule.

Mr. Trout has determined that for each year of the first five years that the new rule is in effect the anticipated public benefit will be bring the rules into consistency with the technology currently in use at the racetracks.

The amendment will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.

The amendment will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting horse racing and to adopt other rules to administer the Act.

The amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

§309.126. Video Recording [~~Videotape~~] Equipment.

(a) An association shall provide a video recording [~~videotape~~] system to record each race in color from start to finish.

(b) The video recording [~~videotape~~] of a horse race must provide a clear panoramic and head-on view of the position and action of the horses and jockeys at a range sufficient for motions to be easily discerned by the stewards. The video recording [~~videotape~~] of a greyhound race must provide a clear view of the position and action of the greyhounds at a range sufficient for motions to be easily discerned by the racing judges.

(c) - (d) (No change.)

(e) The location and height of video towers and the operation of the video recording [~~videotape~~] system must be approved by the executive secretary before its first use in a race.

(f) An association shall provide a viewing room in which, on approval of the stewards or racing judges, an owner, trainer, jockey, or other interested individual may view a video [~~videotape~~] recording of a race.

(g) The association shall maintain an auxiliary video recording [~~videotape~~] system in case of an emergency.

(h) (No change.)

§309.127. Maintenance of Still Images [~~Negatives~~] and Video Recordings [~~Videotapes~~].

(a) An association shall preserve either the negative of each photograph of the finish of a race or the image of each electronic photofinish of a race, whichever device is used, and the video recording [~~videotape~~] of a race for at least one year after the last day of the race meeting during which the photograph, electronic photofinish image or video recording [~~videotape~~] was made.

(b) On request by the Commission, the association shall provide a digital image or print from a negative, or copy of the image from the electronic photofinish device or a copy of a video recording [~~videotape~~] to the Commission.

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

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Mark Fenner
General Counsel
Texas Racing Commission
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CHAPTER 311. OTHER LICENSES
SUBCHAPTER A. LICENSING PROVISIONS
DIVISION 1. OCCUPATIONAL LICENSES

16 TAC §311.2

The Texas Racing Commission proposes an amendment to 16 TAC §311.2. The section relates to application procedures for occupational licenses. The proposed amendment modifies the procedures by which certain individuals apply for occupational licenses. The changes are proposed to address the requirements of Senate Bills 807 and 1307, 84th Texas Legislative Session, which require occupational licensing agencies to waive certain education and examination requirements as well as licensure fees for military members, veterans, and military spouses. The amended rule would allow these persons to apply to have those educational and examination requirements and fees waived.

Chuck Trout, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for local government as a result of enforcing the new rule, and that the fiscal implications for state government from losing these licensing fees will be minimal.

Mr. Trout has determined that for each year of the first five years that the new rule is in effect the anticipated public benefit will be to facilitate the licensing of military members, veterans, and military spouses.

The amendment will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.

The amendment will have a positive effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry by facilitating the licensing of military members, veterans, and military spouses.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act, and §7.02, which requires the Commission to specify the qualifications and experience required for licensing in each category of license that requires qualifications or experience.

The amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

§311.2. Application Procedure.

(a) - (e) (No change.)

(f) License provisions for military service members, military spouses, and military veterans.

(1) The terms "military service member," "military spouse," and "military veteran" shall have the same meaning as those terms are defined in Texas Occupations Code, Chapter 55.

(2) Credit for Military Service. Military service members and military veterans[, ~~as defined in Texas Occupations Code, Chapter 55,~~] will receive credit toward any experience requirements for a license as appropriate for the particular license type and the specific experience of the military service member or veteran.

(3) Credit for holding a current license issued by another jurisdiction. Military service members, military spouses, and military veterans who hold a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the license in this state will receive credit toward any experience requirements for a license as appropriate for the particular license type.

(4) Supporting documentation must be submitted with the license application.

(5) The executive director may waive any prerequisite to obtaining a license for an applicant who is a military service member, military veteran, or military spouse, after reviewing the applicant's credentials.

(6) Expedited license procedure. As soon as practicable after a military service member, military veteran, or military spouse files an application for a license, the commission will process the application and issue the license to an applicant who qualifies under this section.

(7) License application and examination fees will be waived for the initial application of an applicant who qualifies under this subsection.

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

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Mark Fenner
General Counsel
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For further information, please call: (512) 833-6699

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CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING
SUBCHAPTER C. CLAIMING RACES

16 TAC §313.310

The Texas Racing Commission proposes an amendment to 16 TAC §313.310. The section relates to restrictions on claims for horses entered into claiming races. The proposed amendment would amend the claiming rules to more closely follow the Association of Racing Commissioners International's model rules regarding restrictions on claims. The proposal is made in response to a recent incident in which the stewards voided a trainer's claim on the basis that it was a "protection claim," although that term is not defined anywhere in the Act or the Rules. Instead of using this term, the model rules enumerate the specific relationships and circumstances that prevent a claim from being allowed.

Chuck Trout, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing the new rule.

Mr. Trout has determined that for each year of the first five years that the new rule is in effect the anticipated public benefit will be to promote national uniformity in claiming races and to clarify the various restrictions on claims.

The amendment will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.

The amendment will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting horse racing and to adopt other rules to administer the Act.

The amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

§313.310. Restrictions on Claims.

(a) A horse that is claimed may not remain in the care or custody of the owner or trainer from whom the horse was claimed.

(b) A person may not claim more than one horse in a race nor submit more than one claim for a race. An authorized agent may not submit more than one claim in a race, regardless of the number of persons the agent represents. A trainer may not be listed as the trainer for a claimant on more than one claim in the same race.

(c) A person may not offer or agree to claim or refrain from claiming a horse. A person may not prevent or attempt to prevent another person from claiming a horse.

(d) A person may not prevent or attempt to prevent a horse from racing in a claiming race for the purpose of avoiding a claim.

(e) A person shall not claim a horse in which the person has a financial or beneficial interest as an owner or trainer. [~~A protection~~

~~claim is prohibited and a person making such a claim is subject to disciplinary action by the stewards.~~]

(f) A person shall not cause another person to claim a horse for the purpose of obtaining or retaining an undisclosed financial or beneficial interest in the horse.

(g) A person shall not claim a horse, or enter into any agreement to have a horse claimed, on behalf of an ineligible or undisclosed person.

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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General Counsel
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CHAPTER 321. PARI-MUTUEL WAGERING
SUBCHAPTER A. MUTUEL OPERATIONS

The Texas Racing Commission proposes 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. These changes are proposed in conjunction with the proposed repeal of rules authorizing and regulating historical racing under Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register.*

The proposed amendments to §§321.5, 321.12, 321.13, 321.23, 321.25, and 321.27 restore the rules to the language that existed prior to the adoption of the historical racing rules.

Chuck Trout, Executive Director, has determined that for the first five-year period these amendments, as well as the repeal of rules authorizing and regulating historical racing, are in effect there will be no fiscal implications for state or local government as a result of enforcing the amendments since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

Mr. Trout has determined that for each year of the first five years that these amendments, as well as the repeal of rules authorizing and regulating historical racing, are in effect the anticipated public benefit will be to bring the rules into conformity with the decision by the 261st District Court of Travis County that the rules relating to historical racing exceeded the Commission's authority.

The amendments will have no adverse economic effect on small or micro-businesses since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County, therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

The amendments will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

All comments or questions regarding the proposed amended and new rules may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

DIVISION 1. GENERAL PROVISIONS

16 TAC §§321.5, 321.12, 321.13

The amendments are proposed 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 amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

§321.5. Pari-mutuel Auditor.

(a) (No change.)

(b) The pari-mutuel auditor shall verify the wagering pool totals for each live and simulcast performance [~~and any historical racing pools~~]. The pari-mutuel auditor's verification of the pool totals is the basis for computing the amount of money to be set aside from each pool for the following:

(1) - (6) (No change.)

(c) (No change.)

§321.12. Time Synchronization.

(a) Display and verification of the accurate off time and start of a [~~live or simulcast~~] race is critical. To ensure accurate verification of off time with the close of betting on all [~~live and simulcast~~] races, the association shall ensure:

(1) - (3) (No change.)

(b) (No change.)

§321.13. Pari-mutuel Track Report.

(a) Daily Pari-Mutuel Summary Report.

(1) - (3) (No change.)

(4) The report must contain, by each live and simulcast performance[~~, and for each day historical racing is conducted~~], the following:

(A) - (D) (No change.)

(E) all purses earned, broken out by source, such as live, [~~historical racing,~~] simulcast, cross species, and export;

(F) - (H) (No change.)

(b) (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.

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DIVISION 2. WAGERING INFORMATION AND RESULTS

16 TAC §§321.23, 321.25, 321.27

The amendments are proposed 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 amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

§321.23. Wagering Explanations.

(a) (No change.)

[~~(b) Historical racing terminals operated by an association must provide:~~]

[~~(1) an explanation of the rules of the various types of wagers offered through that terminal; and~~]

[~~(2) information about the expiration date of vouchers issued by the terminal, which must be printed on the vouchers.~~]

(b) [~~(c)~~] Wagering explanations must be reviewed and approved by the executive secretary before publication.

§321.25. Wagering Information.

(a) - (c) (No change.)

[~~(d) 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 taken on the associated race.~~]

§321.27. Posting of Race Results.

An association shall submit to the executive secretary for approval a plan for providing live and simulcast race results to the wagering public. The plan must include:

(1) methods by which the results will be provided;

(2) types of results to be provided; and

(3) the retention period of the race results.

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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General Counsel
Texas Racing Commission
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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 Texas Racing Commission proposes the repeal of 16 TAC §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.

The repeal of these rules is necessary to bring the Commission's rules into conformity with the decision by the 261st District Court of Travis County that the rules relating to historical racing exceeded the Commission's authority.

Chuck Trout, Executive Director, has determined that for the first five-year period that the rules are repealed there will be no fiscal implications for state or local government as a result of enforcing the amendments since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

Mr. Trout has determined that for each year of the first five years that the rules are repealed the anticipated public benefit will be to bring the rules into conformity with the decision by the 261st District Court of Travis County that the rules relating to historical racing exceeded the Commission's authority.

The repeal of these rules will have no adverse economic effect on small or micro-businesses since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County, therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the repeal of these rules since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

The repeal of these rules will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and

greyhound training industry since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

All comments or questions regarding the proposed repeal of these rules may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The repeal of these rules is proposed 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 proposed repeal of these rules implements Texas Revised Civil Statutes Annotated, Article 179e.

§321.701. Purpose.

§321.703. Historical Racing.

§321.705. Request to Conduct Historical Racing.

§321.707. Requirements for Operating a Historical Racing Totalisator System.

§321.709. Types of Pari-Mutuel Wagers for Historical Racing.

§321.711. Historical Racing Pools; Seed Pools.

§321.713. Deductions from Pari-Mutuel Pools.

§321.715. Contract Retention, Pari-Mutuel Wagering Record Retention.

§321.717. Effect of Conflict.

§321.719. Severability.

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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Mark Fenner
General Counsel
Texas Racing Commission
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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 21. STUDENT SERVICES
SUBCHAPTER G. TEACH FOR TEXAS LOAN REPAYMENT ASSISTANCE PROGRAM

19 TAC §§21.171 - 21.176

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §§21.171 - 21.176 concerning Teach for Texas Loan Repayment Assistance Program (TFTLRAP). The Board will also propose new rules that will add definitions, eliminate redundant language, add clarifying language, and renumber sections, as appropriate.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for each year of the first five years the rules are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of administering the sections will be better understanding of application ranking criteria and program requirements. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles Puls, Deputy Assistant Commissioner for Student Financial Assistance Programs at 1200 E. Anderson Lane, Austin, Texas 78752 and *Charles.Puls@thecb.state.tx.us.* Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The repeals are proposed under the Texas Education Code (TEC), §56.352, which authorizes the Coordinating Board to provide repayment assistance to qualifying persons, in accordance with the statute and Board rules.

The repeals affect TEC, Chapter 56, Subchapter O and §§21.171 - 21.176 of Chapter 21, Subchapter G of the Texas Administrative Code.

§21.171. Authority and Purpose.
§21.172. Definitions.
§21.173. Priorities of Application Acceptance.
§21.174. Eligible Teacher.
§21.175. Eligible Education Loan.
§21.176. Repayment of Education Loans.

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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TRD-201505840
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: January 31, 2016
For further information, please call: (512) 427-6114

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19 TAC §§21.171 - 21.176

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§21.171 - 21.176 concerning the Teach for Texas Loan Repayment Assistance Program (TFTLRAP). The new sections replace repealed §§21.171 - 21.176, introducing changes to some sections, while retaining language in

other sections, in addition to renumbering resulting from the changes. The changes to rules as they existed before repeal are described below.

Section 21.171 regarding authority and purpose does not include any changes.

Section 21.172 introduces new definitions for certified educator, shortage communities, shortage teaching fields, and teaching full time.

Section 21.173 (formerly §21.174) regarding teacher eligibility requirements excludes language that is provided in proposed new definitions, making the section more concise.

Section 21.174 (formerly §21.173) regarding priorities of application acceptance and ranking of applications provides more details on the criteria for ranking applications. The financial need component, the final criterion considered in the ranking process if funds remain available after applying other ranking criteria, is proposed to be based on the applicant's adjusted gross income reported on the most recent federal income tax return, rather than being based on the amount of student loan indebtedness. To date, the financial need criterion has not been a factor because funds have not been available after the preceding four ranking criteria have been applied. However, should financial need become a factor in the ranking process, adjusted gross income is a more appropriate reflection of general financial need than the amount of student loan debt.

Section 21.175 regarding eligible lender and eligible education loan adds language stating that credit card debt, equity loans, and other similar personal loan products are not considered educational loans eligible for repayment.

Section 21.176 regarding repayment of education loans does not include any changes.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Charles Puls has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be better understanding of application ranking criteria and program requirements. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles Puls, Deputy Assistant Commissioner for Student Financial Assistance Programs at 1200 E. Anderson Lane, Austin, Texas 78752 and *Charles.Puls@thecb.state.tx.us.* Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new rules are proposed under the Texas Education Code (TEC), §56.352, which authorizes the Coordinating Board to provide repayment assistance to qualifying persons, in accordance with the statute and Board rules.

The proposed new rules affect TEC, Chapter 56, Subchapter O, §56.352 and Chapter 21, Subchapter G, §§21.171 - 21.176 of the Texas Administrative Code.

§21.171. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in Texas Education Code, Chapter 56, Subchapter O, Teach for Texas Loan Repayment Assistance Program. These rules establish procedures to administer the subchapter as prescribed in the Texas Education Code, §56.352.

(b) Purpose. The purpose of the Teach for Texas Loan Repayment Assistance Program is to recruit and retain classroom teachers in communities and subjects for which there is an acute shortage of teachers in Texas.

§21.172. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Certified Educator--A person who has completed all requirements for a standard teaching certificate in the State of Texas. A person holding a probationary certificate, temporary classroom assignment permit, emergency permit, or a nonrenewable permit is not considered a certified educator. The term does not include a teacher's aide or a full-time administrator.

(3) Default--For purposes of this subchapter, a loan is considered in default if it is reduced to judgment.

(4) Service Period--A period of service of at least 9 months of a 12-month academic year.

(5) Shortage Communities--Texas public schools identified annually by the Texas Commissioner of Education, or his/her designee, whose percentage of economically disadvantaged students is higher than the statewide average percentage of students receiving free or reduced cost lunches.

(6) Shortage Teaching Fields--Subjects identified annually by the Texas Commissioner of Education, or his/her designee, as having a critical shortage of teachers.

(7) Teaching full-time--Teaching at least four hours each day performing instructional duties as a full-time employee of a Texas public school district.

§21.273. Eligible Teacher.

To be eligible for loan repayment an individual must:

(1) be certified in a shortage teaching field, be currently teaching full time in that field at the time of application, and have taught in that field full time for at least one year at the preschool, primary, or secondary level in a Texas public school; or

(2) be a certified educator currently teaching in a shortage community full time at the time of application at the preschool, primary, or secondary level and have taught in that community full time for at least one year; and

(3) submit a completed application to the Board by the stated deadline.

§21.174. Priorities of Application Acceptance and Ranking of Applications.

Renewal applications shall be given priority over first-time applications unless a break in service periods has occurred. Acceptance of initial applications will depend upon the availability of funds. An application deadline will be established each year and published on the Board's website. Applications will be ranked according to the following criteria, in order of priority:

(1) Teaching in a shortage field while also teaching in a shortage community that has the most severe teacher shortages.

(2) Teaching any subject in a shortage community that has the most severe teacher shortages.

(3) Teaching in a shortage field while also teaching in a shortage community.

(4) Financial need based on the applicant's adjusted gross income as reported on the most recently filed federal income tax return.

§21.175. Eligible Lender and Eligible Education Loan.

(a) The Board shall retain the right to determine the eligibility of lenders and holders of education loans to which payments may be made. An eligible lender or holder shall, in general, make or hold education loans made to individuals for purposes of undergraduate, or graduate education of the teacher and shall not be any private individual. An eligible lender or holder may be, but is not limited to, a bank, savings and loan association, credit union, institution of higher education, secondary market, governmental agency, or private foundation. Credit card, equity loans and other similar personal loan products are not considered educational loans eligible for repayment.

(b) To be eligible for repayment, an education loan must:

(1) be evidenced by a promissory note for loans to pay for the cost of attendance for the undergraduate or graduate education of the individual applying for repayment assistance;

(2) not be in default at the time of the teacher's application;

(3) not have an existing obligation to provide service for loan forgiveness through another program; and

(4) if the loan was consolidated with other loans, the applicant must provide documentation of the portion of the consolidated debt that was originated to pay for the cost of attendance for his or her undergraduate or graduate education.

§21.176. Repayment of Education Loans.

Eligible education loans shall be repaid under the following conditions:

(1) the annual repayment(s) shall be in one disbursement made payable to the holder(s) of the loan(s) or co-payable to the teacher and the holder(s) of the loan(s);

(2) the Commissioner of Higher Education shall determine the annual repayment amount, taking into consideration the amount of available funding; and

(3) the teacher shall not receive loan repayment assistance for more than five years.

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 December 16, 2015.

TRD-201505690
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: January 31, 2016
For further information, please call: (512) 427-6114

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER BB. COMMISSIONER'S RULES ON REPORTING REQUIREMENTS

19 TAC §61.1027

The Texas Education Agency proposes an amendment to §61.1027, concerning reporting requirements. The section addresses the report on the number of disadvantaged students. The proposed amendment would modify the rule to reflect changes in statute made by House Bill (HB) 1305, 84th Texas Legislature, 2015.

The Texas Education Code (TEC), §33.901, provides requirements for certain school districts and open-enrollment charter schools to provide a free or reduced-price breakfast program for eligible students. HB 1305, 84th Texas Legislature, 2015, amended the TEC, §33.901, to allow a school district or charter school that would otherwise be required to participate in the national School Breakfast Program (SBP) to instead develop and implement a locally funded program to provide free or reduced-price meals to all students in the school(s) who are eligible for the national program.

The TEC, §42.152, establishes the state compensatory education (SCE) allotment and provides the methods for determining the number of educationally disadvantaged students in a district. Before amendment by HB 1305, the TEC, §42.152(b), allowed school districts and open-enrollment charter schools to use the alternative reporting method only if no campuses participated in the National School Lunch Program (NSLP) or SBP. HB 1305 amended the statute to permit districts and open-enrollment charter schools to generate SCE funding both for students who participate in the NSLP or SBP at one or more campuses in the district and for students who participate in a locally funded program at one or more campuses in the district.

HB 1305 also amended the TEC, §42.152, to change the calculation of the number of educationally disadvantaged students for purposes of calculating the SCE allotment within the Foundation School Program from averaging the best six months' enrollment in the NSLP for the preceding school year to averaging the best six months' number of students eligible for enrollment in the NSLP.

Finally, the TEC, §42.152, was changed by HB 1305 to allow a student receiving a full-time virtual education to be included in the determination of the number of educationally disadvantaged students in a district if the school district submits a plan to the commissioner detailing the enhanced services that will be provided to the students and the plan is approved by the commissioner.

The proposed amendment to 19 TAC §61.1027 would reflect the changes made by HB 1305. Subsection (a) would be amended to clarify which school districts and open-enrollment charter schools may use the alternative method of calculating the number of disadvantaged students. In addition, language would be added to subsection (b) to specify the requirements school districts and charter schools must follow in order to count students receiving a full-time virtual education in the number of disadvantaged students.

The proposed amendment would have no new procedural or reporting implications. The rule currently requires school districts and open-enrollment charter schools to follow current reporting requirements outlined in 19 TAC §61.1027(b) and (c).

The proposed amendment would have no new locally maintained paperwork requirements. The rule currently requires school districts and open-enrollment charter schools to maintain household income documentation for students included in the count of educationally disadvantaged students as outlined in 19 TAC §61.1027(b) and (c).

FISCAL NOTE. Lisa Dawn-Fisher, associate commissioner for school finance / chief school finance officer, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government beyond what the authorizing statute requires as a result of enforcing or administering the amendment. The proposed amendment would provide SCE weighted funding to an increased number of students in school districts and open-enrollment charter schools that choose to offer a locally funded program.

PUBLIC BENEFIT/COST NOTE. Ms. Dawn-Fisher has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to increase the number of disadvantaged students used for computing a school district's SCE allotment and, therefore, the funding available for the district to fund supplemental programs and services designed to eliminate any disparity in performance on assessment instruments administered under the TEC, Chapter 39, Subchapter B, or disparity in the rates of high school completion between students at risk of dropping out of school, as defined by the TEC, §29.081, and all other students. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICROBUSINESSES. 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.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins January 1, 2016, and ends February 1, 2016. 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.texas.gov* 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 January 1, 2016.

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code, §42.152, as amended by House Bill 1305, 84th Texas Legislature, 2015, which authorizes the commissioner to adopt rules to provide a method other than participation in the National School Lunch Program for school districts to count their educationally disadvantaged students in order to qualify for compensatory education program funding.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §42.152, as amended by House Bill 1305, 84th Texas Legislature, 2015.

§61.1027. Report on the Number of Disadvantaged Students.

(a) Student eligibility. School districts and open-enrollment charter schools with one or more campuses [~~that do~~] not participating [~~participate~~] in the national school lunch program may derive an eligible student count by an alternative method for the purpose of receiving the compensatory education allotment pursuant to Texas Education Code, §42.152(b).

(1) To be considered educationally disadvantaged in order to be counted for compensatory education funding using the alternative method, a student must meet the income requirements for eligibility under the national school lunch program.

(2) The total number of eligible students is the average of the best six months' count of students [~~pupils~~] in accordance with paragraph (1) [~~subsection (a)(1)~~] of this subsection [~~section~~]. For school districts and open-enrollment charter schools in the first year of operation, the count is taken from the current school year. For all others, the count is from the preceding school year.

(b) Application and reporting procedures.

(1) The commissioner of education will make available to school districts and open-enrollment charter schools appropriate income eligibility guidelines and application and reporting forms. The number of eligible students in accordance with subsection (a)(1) of this section will be reported on a monthly basis to the Texas Education Agency in a manner and with a deadline specified by the commissioner.

(2) School districts and open-enrollment charter schools must request prior approval from the commissioner to claim students receiving a full-time virtual education through the state virtual school network in their counts of educationally disadvantaged students. The request must include a plan detailing the enhanced services to be delivered to full-time state virtual school network students and submitted in a manner and with a deadline specified by the commissioner.

(c) Recordkeeping. School districts and open-enrollment charter schools that receive compensatory education program funding pursuant to this section are responsible for obtaining the appropriate data from families of potentially eligible students, verifying that information, and retaining records.

(d) Auditing procedures. The Texas Education Agency will conduct an audit of data submitted by school districts and open-enrollment charter schools that receive compensatory education program funding pursuant to this section approximately every five years or on an alternative schedule adopted at the discretion of 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 December 18, 2015.

TRD-201505804
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: January 31, 2016
For further information, please call: (512) 475-1497

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PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 231. REQUIREMENTS FOR PUBLIC SCHOOL PERSONNEL ASSIGNMENTS

The State Board for Educator Certification (SBEC) proposes amendments to 19 TAC §§231.5, 231.11, 231.77, 231.91,

231.209, 231.253, 231.257, 231.333, 231.335, 231.337, 231.481, 231.483, 231.489, and 231.579, concerning requirements for public school personnel assignments. The sections establish Prekindergarten-Grade 6, Grades 6-8, Grades 6-12, and Grades 9-12 assignments. The proposed amendments would clarify the appropriate credential for placement in a particular teaching assignment and implement applicable requirements from the 84th Texas Legislature, Regular Session, 2015.

Current 19 TAC Chapter 231, Requirements for Public School Personnel Assignments, provides guidance to school districts with regard to the certificates required for specific assignments of public school educators with corresponding certificates for each assignment for ease of use by school district personnel.

The proposed amendments to 19 TAC Chapter 231, Subchapters B - E, would identify the appropriate certificates for placement in particular Prekindergarten-Grade 6, Grades 6-8, Grades 6-12, and Grades 9-12 classroom assignments.

Subchapter B, Prekindergarten-Grade 6 Assignments

As a result of House Bill (HB) 218, 84th Texas Legislature, Regular Session, 2015, language in 19 TAC §231.5, Bilingual, Prekindergarten, and §231.11, Bilingual, Kindergarten-Grade 6, would be amended to ensure individuals are appropriately certified in bilingual education or English as a second language if teaching the English component only of a dual language immersion/one-way or two-way program model in Prekindergarten-Grade 6. The proposed amendments to §231.5 and §231.11 would also specify that a valid classroom teaching certificate appropriate for the grade level and subject areas taught plus any bilingual education certificate or endorsement would also be an acceptable combination of credentials to teach in the respective bilingual assignments. The proposed amendments would allow broader application of all bilingual certificates in combination with the valid classroom teaching certificate appropriate for the grade level and subject areas taught, would provide clarity for assigning individuals into bilingual assignments, and would eliminate some of the confusion that currently exists about the various names of bilingual certificates issued over the years.

Subchapter C, Grades 6-8 Assignments

Language in 19 TAC §231.77 would be amended to delete Technology Applications: Grades 7-12 from the list of certificates appropriate for the Technology Applications, Grades 6-8 assignment because SBEC approved deletion of the Technology Applications: Grades 7-12 certificate in another section of the SBEC rules. Remaining paragraphs would be renumbered accordingly.

Subchapter D, Electives, Disciplinary Courses, Local Credit Courses, and Innovative Courses, Grades 6-12 Assignments

As a result of SB 1309, 84th Texas Legislature, Regular Session, 2015, language in 19 TAC §231.91 would be amended to add the proposed new standard Junior Reserve Officer Training Corps: Grades 6-12 certificate to the list of credentials appropriate to teach Reserve Officer Training Corps (ROTC). SBEC approved for publication a proposed rule to establish the Junior Reserve Officer Training Corps: Grades 6-12 certificate in another chapter of its rules. The proposed amendment to §231.91 would also change the grade level reference for the ROTC assignment from Grades 9-12 to Grades 6-12 to ensure that districts providing ROTC courses at the middle school level would have guidance on placement of teachers into that assignment. Remaining subsections would be relettered accordingly.

Subchapter E, Grades 9-12 Assignments

Language in 19 TAC §231.209 would be amended to delete the reference to TEA-approved training to match wording adopted effective May 17, 2015, by the SBEC in an earlier rule change for the same course in 19 TAC §231.573, Principles of Technology, Grades 9-12. References to Technology Applications: Grades 7-12 would be deleted from the list of certificates appropriate for the various assignments for Grades 9-12 specified in 19 TAC §§231.253, 231.257, 231.333, 231.335, 231.337, 231.481, 231.483, and 231.489 because SBEC approved for publication a rule amendment that, if adopted, would delete the Technology Applications: Grades 7-12 certificate. Remaining paragraphs in those sections would be renumbered accordingly. In addition, language would be amended in 19 TAC §231.579, Principles of Engineering, Grades 9-12, to delete the reference to required hours of physics to be eligible to teach the course.

The proposed amendments would have no procedural and reporting implications. Also, the proposed amendments would have no locally maintained paperwork requirements.

FISCAL NOTE. Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed amendments are in effect there will be no additional fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT/COST NOTE. Mr. Franklin has determined that for the first five-year period the proposed amendments are in effect the public and student benefit anticipated as a result of the proposed amendments to 19 TAC Chapter 231 would be updated requirements relating to the assignment of educators in Texas public schools. There are no additional costs to persons required to comply with the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICROBUSINESSES. 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.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins January 1, 2016, and ends February 1, 2016. The SBEC will take registered oral and written comments on the proposed amendments to 19 TAC Chapter 231, Subchapters B - E, at the February 12, 2016, meeting in accordance with the SBEC board operating policies and procedures. 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 *sbecrules@tea.texas.gov* or faxed to (512) 463-5337. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on January 1, 2016.

SUBCHAPTER B. PREKINDERGARTEN-GRADE 6 ASSIGNMENTS

19 TAC §231.5, §231.11

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The proposed amendments implement the TEC, §21.031(a) and §21.041(b)(2).

§231.5. Bilingual, Prekindergarten.

(a) An assignment for Bilingual, Prekindergarten, is allowed with one of the following certificates.

(1) Bilingual Generalist: Early Childhood-Grade 4.

(2) Bilingual Generalist: Early Childhood-Grade 6.

(3) A valid classroom teaching certificate appropriate for the grade level and subject areas taught plus any bilingual education certificate or endorsement [~~one of the following~~].

[~~(A) Bilingual Education Supplemental.~~]

[~~(B) Bilingual Education Supplemental (Early Childhood-Grade 4).~~]

[~~(C) Bilingual Education Supplemental (Grades 4-8).~~]

[~~(D) Bilingual Endorsement.~~]

[~~(E) Bilingual/English as a Second Language Endorsement.~~]

(4) Early Childhood Education (Prekindergarten and Kindergarten).

(A) Initial assignments beginning with the 1991-1992 school year require the bilingual education delivery system or endorsement.

(B) Teachers assigned prior to the 1991-1992 school year are required to verify oral and written proficiency in the language of the target population as measured by examinations approved by the Texas Education Agency (TEA) by September 1, 1993, to be eligible for assignment.

(5) Elementary--General.

(A) Teachers assigned prior to the 1991-1992 school year are required to complete a minimum of 90 clock-hours of in-service training (may be advanced academic training) or six semester credit hours in early childhood education, inclusive of but not limited to child development or language acquisition, by September 1, 1993, to be eligible for assignment.

(B) Initial assignments beginning with the 1991-1992 school year require the early childhood education delivery system or endorsement and the bilingual education delivery system or endorsement.

(C) Teachers assigned prior to the 1991-1992 school year are required to verify oral and written proficiency in the language of the target population as measured by examinations approved by the TEA by September 1, 1993, to be eligible for assignment.

(6) Elementary--General (Grades 1-6).

(A) Teachers assigned prior to the 1991-1992 school year are required to complete a minimum of 90 clock-hours of in-service training (may be advanced academic training) or six semester credit hours in early childhood education, inclusive of but not limited to child development or language acquisition, by September 1, 1993, to be eligible for assignment.

(B) Initial assignments beginning with the 1991-1992 school year require the early childhood education delivery system or endorsement and the bilingual education delivery system or endorsement.

(C) Teachers assigned prior to the 1991-1992 school year are required to verify oral and written proficiency in the language of the target population as measured by examinations approved by the TEA by September 1, 1993, to be eligible for assignment.

(7) Elementary--General (Grades 1-8).

(A) Teachers assigned prior to the 1991-1992 school year are required to complete a minimum of 90 clock-hours of in-service training (may be advanced academic training) or six semester credit hours in early childhood education, inclusive of but not limited to child development or language acquisition, by September 1, 1993, to be eligible for assignment.

(B) Initial assignments beginning with the 1991-1992 school year require the early childhood education delivery system or endorsement and the bilingual education delivery system or endorsement.

(C) Teachers assigned prior to the 1991-1992 school year are required to verify oral and written proficiency in the language of the target population as measured by examinations approved by the TEA by September 1, 1993, to be eligible for assignment.

(8) Elementary Early Childhood Education (Prekindergarten-Grade 6).

(A) Initial assignments beginning with the 1991-1992 school year require the bilingual education delivery system or endorsement.

(B) Teachers assigned prior to the 1991-1992 school year are required to verify oral and written proficiency in the language of the target population as measured by examinations approved by the TEA by September 1, 1993, to be eligible for assignment.

(9) Elementary Self-Contained (Grades 1-8).

(A) Teachers assigned prior to the 1991-1992 school year are required to complete a minimum of 90 clock-hours of in-service training (may be advanced academic training) or six semester credit hours in early childhood education, inclusive of but not limited to child development or language acquisition, by September 1, 1993, to be eligible for assignment.

(B) Initial assignments beginning with the 1991-1992 school year require the early childhood education delivery system or endorsement.

(10) Elementary teacher certification with Bilingual Endorsement.

(A) Teachers assigned prior to the 1991-1992 school year are required to complete a minimum of 90 clock-hours of in-service training (may be advanced academic training) or six semester credit hours in early childhood education, inclusive of but not limited to child development or language acquisition, by September 1, 1993, to be eligible for assignment.

(B) Initial assignments beginning with the 1991-1992 school year require the early childhood education delivery system or endorsement.

(11) Prekindergarten-Grade 5--General.

(A) Initial assignments beginning with the 1991-1992 school year require the bilingual education delivery system or endorsement.

(B) Teachers assigned prior to the 1991-1992 school year are required to verify oral and written proficiency in the language of the target population as measured by examinations approved by the TEA by September 1, 1993, to be eligible for assignment.

(12) Prekindergarten-Grade 6--General.

(A) Initial assignments beginning with the 1991-1992 school year require the bilingual education delivery system or endorsement.

(B) Teachers assigned prior to the 1991-1992 school year are required to verify oral and written proficiency in the language of the target population as measured by examinations approved by the TEA by September 1, 1993, to be eligible for assignment.

(13) Prekindergarten-Grade 6--Bilingual/English as a Second Language.

(14) Prekindergarten-Grade 12--Bilingual/English as a Second Language.

(15) Kindergarten.

(A) Initial assignments beginning with the 1991-1992 school year require the bilingual education delivery system or endorsement.

(B) Teachers assigned prior to the 1991-1992 school year are required to verify oral and written proficiency in the language of the target population as measured by examinations approved by the TEA by September 1, 1993, to be eligible for assignment.

(16) Teacher of Young Children--General.

(A) Initial assignments beginning with the 1991-1992 school year require the bilingual education delivery system or endorsement.

(B) Teachers assigned prior to the 1991-1992 school year are required to verify oral and written proficiency in the language of the target population as measured by examinations approved by the TEA by September 1, 1993, to be eligible for assignment.

(b) An assignment for the English component only of a dual language immersion/one-way or two-way bilingual education program model for Prekindergarten is allowed with a valid classroom teaching certificate appropriate for the grade level and subject areas taught plus a bilingual education certificate or endorsement or an English as a Second Language certificate or endorsement.

§231.11. Bilingual, Kindergarten-Grade 6.

(a) An assignment for Bilingual, Kindergarten-Grade 6, is allowed with one of the following certificates.

(1) Bilingual Generalist: Early Childhood-Grade 4 (Kindergarten-Grade 4 only).

(2) Bilingual Generalist: Early Childhood-Grade 6.

(3) Bilingual Generalist: Grades 4-8 (Grades 4-6 only).

(4) A valid classroom teaching certificate appropriate for the grade level and subject areas taught plus any bilingual education certificate or endorsement [~~one of the following~~].

[~~(A) Bilingual Education Supplemental.~~]

[~~(B) Bilingual Education Supplemental (Early Childhood-Grade 4).~~]

[~~(C) Bilingual Education Supplemental (Grades 4-8).~~]

[~~(D) Bilingual Endorsement.~~]

[~~(E) Bilingual/English as a Second Language Endorsement.~~]

(5) Prekindergarten-Grade 5--Bilingual/English as a Second Language (Prekindergarten-Grade 5 only).

(6) Prekindergarten-Grade 6--Bilingual/English as a Second Language.

(7) Prekindergarten-Grade 12--Bilingual/English as a Second Language.

(b) An assignment for the English component only of a dual language immersion/one-way or two-way bilingual education program model for Prekindergarten is allowed with a valid classroom teaching certificate appropriate for the grade level and subject areas taught plus a bilingual education certificate or endorsement or an English as a Second Language certificate or endorsement.

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
State Board for Educator Certification
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For further information, please call: (512) 475-1497

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SUBCHAPTER C. GRADES 6-8 ASSIGNMENTS

19 TAC §231.77

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and §21.0486, which allows one with a technology applications certificate to teach principles of arts, audio/video technology, and communications, and to teach principles of information technology, in addition to teaching technology applications courses.

CROSS REFERENCE TO STATUTE. The proposed amendment implements the TEC, §§21.031(a); 21.041(b)(2); and 21.0486.

§231.77. Technology Applications, Grades 6-8.

An assignment in a departmentalized classroom for Technology Applications, Grades 6-8, is allowed with one of the following certificates.

(1) Elementary teacher certificate plus verification of competency to teach computer literacy.

(2) Grades 6-12 or Grades 6-8--Computer Information Systems.

(3) Information Processing Technologies Endorsement (Level I or II).

(4) Junior High School or High School--Computer Information Systems.

(5) Secondary Computer Information Systems (Grades 6-12).

(6) Secondary teacher certificate plus verification of competency to teach computer literacy.

(7) Technology Applications: Early Childhood-Grade 12.

[(8) Technology Applications: Grades 7-12.]

(8) [(9)] Technology Applications: Grades 8-12 (Grade 8 only).

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
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State Board for Educator Certification
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For further information, please call: (512) 475-1497

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SUBCHAPTER D. ELECTIVES, DISCIPLINARY COURSES, LOCAL CREDIT COURSES, AND INNOVATIVE COURSES, GRADES 6-12 ASSIGNMENTS

19 TAC §231.91

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and §21.0487, as added by Senate Bill (SB) 1309, 84th Texas Legislature, Regular Session, 2015, which requires the SBEC to establish a standard Junior Reserve Officer Training Corps (JROTC) teaching certificate to provide JROTC instruction; however, a person is not required to hold a JROTC certificate to be employed by a school district as a JROTC instructor.

CROSS REFERENCE TO STATUTE. The proposed amendment implements the TEC, §§21.031(a); 21.041(b)(2); and 21.0487, as added by SB 1309, 84th Texas Legislature, Regular Session, 2015.

§231.91. Reserve Officer [Officers'] Training Corps.

(a) An assignment for Reserve Officer [Officers'] Training Corps (ROTC), Grades 6-12 [9-12], is allowed with one of the following credentials [an Emergency Permit].

(1) Junior Reserve Officer Training Corps: Grades 6-12 certificate.

(2) Emergency permit for Reserve Officer Training Corps (ROTC), Grades 6-12.

(b) An emergency permit [Emergency Permit] for ROTC may not be renewed, but must be reissued every year as specified in §230.77(g)(4) of this title (relating to Specific Requirements for Initial Emergency Permits).

(c) [(b)] School districts must apply and pay for reissuance of a new ROTC instructor emergency permit each year the instructor serves.

(d) [(c)] ROTC may be used for Physical Education substitution credit.

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
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State Board for Educator Certification
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For further information, please call: (512) 475-1497

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SUBCHAPTER E. GRADES 9-12 ASSIGNMENTS
DIVISION 5. SCIENCE, GRADES 9-12 ASSIGNMENTS

19 TAC §231.209

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The proposed amendment implements the TEC, §21.031(a) and §21.041(b)(2).

§231.209. Principles of Technology, Grades 9-12.

(a) An assignment for Principles of Technology, Grades 9-12, is allowed with one of the following certificates.

(1) Grades 6-12 or Grades 9-12--Industrial Arts.

(2) Grades 6-12 or Grades 9-12--Industrial Technology.

(3) Grades 6-12 or Grades 9-12--Physics.

(4) Grades 6-12 or Grades 9-12--Science.

(5) Grades 6-12 or Grades 9-12--Science, Composite.

(6) Junior High School (Grades 9-10 only) or High School--Industrial Arts.

(7) Junior High School (Grades 9-10 only) or High School--Physics.

(8) Junior High School (Grades 9-10 only) or High School--Science, Composite.

(9) Master Science Teacher (Grades 8-12).

(10) Mathematics/Physical Science/Engineering: Grades 6-12.

(11) Mathematics/Physical Science/Engineering: Grades 8-12.

(12) Physical Science: Grades 6-12.

(13) Physical Science: Grades 8-12.

(14) Physics/Mathematics: Grades 7-12.

(15) Physics/Mathematics: Grades 8-12.

(16) Science: Grades 7-12.

(17) Science: Grades 8-12.

(18) Secondary Industrial Arts (Grades 6-12).

(19) Secondary Industrial Technology (Grades 6-12).

(20) Secondary Physics (Grades 6-12).

(21) Secondary Science (Grades 6-12).

(22) Secondary Science, Composite (Grades 6-12).

(23) Technology Education: Grades 6-12.

(b) An assignment for Principles of Technology, Grades 9-12, may also be taught with a vocational agriculture certificate or a trades and industry certificate with verifiable physics applications experience in business and industry, if assigned prior to the 1998-1999 school year. Six semester credit hours of college physics, chemistry, or electricity/electronics may be substituted for the business and industry experience.

~~[(c) All teachers assigned to Principles of Technology shall participate in Texas Education Agency-approved training and have eight semester credit hours in physics prior to teaching the course. At the discretion of the employing school district, persons assigned to Principles of Technology prior to the 2010-2011 school year may continue in the assignment.]~~

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
State Board for Educator Certification
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For further information, please call: (512) 475-1497

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DIVISION 8. TECHNOLOGY APPLICATIONS, GRADES 9-12 ASSIGNMENTS

19 TAC §231.253, §231.257

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and §21.0486, which allows one with a technology applications certificate to teach principles of arts, audio/video technology, and communications, and to teach principles of information technology, in addition to teaching technology applications courses.

CROSS REFERENCE TO STATUTE. The proposed amendments implement the TEC, §§21.031(a); 21.041(b)(2); and 21.0486.

§231.253. Technology Applications, Grades 9-12.

An assignment for Digital Video and Audio Design, Web Communications, Digital Design and Media Production, Digital Art and Animation, 3-D Modeling and Animation, Digital Communications in the 21st Century, Web Design, Web Game Development, Independent Study in Technology Applications, or Independent Study in Evolving/Emerging Technologies, Grades 9-12, is allowed with one of the following certificates.

(1) Technology Applications: Early Childhood-Grade 12.

~~[(2) Technology Applications: Grades 7-12.]~~

(2) [~~(3)~~] Technology Applications: Grades 8-12.

§231.257. Game Programming and Design or Mobile Application Development, Grades 9-12.

An assignment for Game Programming and Design or Mobile Application Development, Grades 9-12, is allowed with one of the following certificates.

(1) Computer Science: Grades 8-12.

(2) Grades 6-12 or Grades 9-12--Computer Information Systems.

(3) Junior High School (Grades 9-10 only) or High School--Computer Information Systems.

(4) Secondary Computer Information Systems (Grades 6-12).

(5) Technology Applications: Early Childhood-Grade 12.

~~[(6) Technology Applications: Grades 7-12.]~~

(6) [~~(7)~~] Technology Applications: Grades 8-12.

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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DIVISION 12. ARTS, AUDIO VIDEO TECHNOLOGY, AND COMMUNICATIONS, GRADES 9-12 ASSIGNMENTS

19 TAC §§231.333, 231.335, 231.337

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and §21.0486, which allows one with a technology applications certificate to teach principles of arts, audio/video technology, and communications, and to teach principles of information technology, in addition to teaching technology applications courses.

CROSS REFERENCE TO STATUTE. The proposed amendments implement the TEC, §§21.031(a); 21.041(b)(2); and 21.0486.

§231.333. Principles of Arts, Audio Video Technology, and Communications, Grades 9-12.

An assignment for Principles of Arts, Audio Video Technology, and Communications, Grades 9-12, is allowed with one of the following certificates.

(1) Any business or office education certificate.

(2) Business and Finance: Grades 6-12.

(3) Business Education: Grades 6-12.

(4) Secondary Industrial Arts (Grades 6-12).

(5) Secondary Industrial Technology (Grades 6-12).

(6) Technology Applications: Early Childhood-Grade 12.

[~~(7) Technology Applications: Grades 7-12.~~]

(7) [~~(8)~~] Technology Applications: Grades 8-12.

(8) [~~(9)~~] Technology Education: Grades 6-12.

(9) [~~(10)~~] Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(10) [~~(11)~~] Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(11) [~~(12)~~] Vocational Trades and Industry. This assignment requires appropriate work approval.

§231.335. Animation, Grades 9-12.

An assignment for Animation or Advanced Animation, Grades 9-12, is allowed with one of the following certificates.

(1) Any business or office education certificate.

(2) Business and Finance: Grades 6-12.

(3) Business Education: Grades 6-12.

(4) Secondary Industrial Arts (Grades 6-12).

(5) Secondary Industrial Technology (Grades 6-12).

(6) Technology Applications: Early Childhood-Grade 12.

[~~(7) Technology Applications: Grades 7-12.~~]

(7) [~~(8)~~] Technology Applications: Grades 8-12.

(8) [~~(9)~~] Technology Education: Grades 6-12.

(9) [~~(10)~~] Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(10) [~~(11)~~] Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(11) [~~(12)~~] Vocational Trades and Industry. This assignment requires appropriate work approval.

§231.337. Audio Video Production; Graphic Design and Illustration, Grades 9-12.

(a) An assignment for Audio Video Production, Advanced Audio Video Production, Graphic Design and Illustration, or Advanced Graphic Design and Illustration, Grades 9-12, is allowed with one of the following certificates.

(1) Secondary Industrial Arts (Grades 6-12).

(2) Secondary Industrial Technology (Grades 6-12).

(3) Technology Applications: Early Childhood-Grade 12.

[~~(4) Technology Applications: Grades 7-12.~~]

(4) [~~(5)~~] Technology Applications: Grades 8-12.

(5) [~~(6)~~] Technology Education: Grades 6-12.

(6) [~~(7)~~] Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(7) [~~(8)~~] Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(8) [~~(9)~~] Vocational Trades and Industry. This assignment requires appropriate work approval.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Practicum in Audio Video Production or Practicum in Graphic Design and Illustration, Grades 9-12, is allowed with one of the following certificates.

(1) Secondary Industrial Arts (Grades 6-12).

(2) Secondary Industrial Technology (Grades 6-12).

(3) Technology Education: Grades 6-12.

(4) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(5) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(6) Vocational Trades and Industry. This assignment requires appropriate work approval.

(c) The school district is responsible for ensuring that each teacher assigned to Practicum in Audio Video Production or Practicum in Graphic Design and Illustration, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

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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DIVISION 20. INFORMATION TECHNOLOGY, GRADES 9-12 ASSIGNMENTS

19 TAC §§231.481, 231.483, 231.489

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and §21.0486, which allows one with a technology applications certificate to teach principles of arts, audio/video technology, and communications, and to teach principles of information technology, in addition to teaching technology applications courses.

CROSS REFERENCE TO STATUTE. The proposed amendments implement the TEC, §§21.031(a); 21.041(b)(2); and 21.0486.

§231.481. Information Technology, Grades 9-12.

An assignment for Principles of Information Technology, Research in Information Technology Solutions, or Telecommunications and Networking, Grades 9-12, is allowed with one of the following certificates.

(1) Any business or office education certificate.

(2) Business and Finance: Grades 6-12.

(3) Business Education: Grades 6-12.

(4) Secondary Industrial Arts (Grades 6-12).

(5) Secondary Industrial Technology (Grades 6-12).

(6) Technology Applications: Early Childhood-Grade 12.

[~~(7) Technology Applications: Grades 7-12.~~]

(7) [~~(8)~~] Technology Applications: Grades 8-12.

(8) [~~(9)~~] Technology Education: Grades 6-12.

(9) [~~(10)~~] Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(10) [~~(11)~~] Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(11) [~~(12)~~] Vocational Trades and Industry. This assignment requires appropriate work approval.

§231.483. Digital and Interactive Media or Web Technologies, Grades 9-12.

An assignment for Digital and Interactive Media or Web Technologies, Grades 9-12, is allowed with one of the following certificates.

(1) Any business or office education certificate.

(2) Business and Finance: Grades 6-12.

(3) Business Education: Grades 6-12.

(4) Secondary Industrial Arts (Grades 6-12).

(5) Secondary Industrial Technology (Grades 6-12).

(6) Technology Education: Grades 6-12.

(7) Technology Applications: Early Childhood-Grade 12.

[~~(8) Technology Applications: Grades 7-12.~~]

(8) [~~(9)~~] Technology Applications: Grades 8-12.

(9) [~~(10)~~] Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(10) [~~(11)~~] Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(11) [~~(12)~~] Vocational Trades and Industry. This assignment requires appropriate work approval.

§231.489. Computer Technician, Grades 9-12.

An assignment for Computer Technician, Grades 9-12, is allowed with one of the following certificates.

(1) Secondary Industrial Arts (Grades 6-12).

(2) Secondary Industrial Technology (Grades 6-12).

(3) Technology Education: Grades 6-12.

(4) Technology Applications: Early Childhood-Grade 12.

[~~(5) Technology Applications: Grades 7-12.~~]

(5) [~~(6)~~] Technology Applications: Grades 8-12.

(6) [~~(7)~~] Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(7) [~~(8)~~] Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(8) [~~(9)~~] Vocational Trades and Industry. This assignment requires appropriate work approval.

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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DIVISION 24. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS, GRADES 9-12 ASSIGNMENTS

19 TAC §231.579

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate

and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The proposed amendment implements the TEC, §21.031(a) and §21.041(b)(2).

§231.579. Principles of Engineering, Grades 9-12.

(a) Subject to the requirements in subsection (b) of this section, an assignment for Principles of Engineering, Grades 9-12, is allowed with one of the following certificates.

(1) Master Science Teacher (Grades 8-12).

(2) Mathematics/Physical Science/Engineering: Grades 6-12.

(3) Mathematics/Physical Science/Engineering: Grades 8-12.

(4) Physical Science: Grades 6-12.

(5) Physical Science: Grades 8-12.

(6) Physics/Mathematics: Grades 7-12.

(7) Physics/Mathematics: Grades 8-12.

(8) Science: Grades 7-12.

(9) Science: Grades 8-12.

(10) Science, Technology, Engineering, and Mathematics: Grades 6-12.

(11) Secondary Industrial Arts (Grades 6-12).

(12) Secondary Industrial Technology (Grades 6-12).

(13) Secondary Physics (Grades 6-12).

(14) Secondary Science (Grades 6-12).

(15) Secondary Science, Composite (Grades 6-12).

(16) Technology Education: Grades 6-12.

(b) All teachers assigned to Principles of Engineering shall participate in Texas Education Agency-approved training [~~and have eight semester credit hours in physics~~] prior to teaching this course.

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 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

19 TAC §§233.1, 233.3 - 233.5, 233.7, 233.10, 233.14, 233.15, 233.17

The State Board for Educator Certification (SBEC) proposes amendments to 19 TAC §§233.1, 233.3-233.5, 233.7, 233.10, 233.14, and 233.15 and proposes new §233.17, concerning categories of classroom teaching certificates. The sections contain the current classroom teaching certificates by category, grade level, and subject areas. The proposed amendments would update the list of classroom certificates that either are eligible for issuance or that would continue to be recognized if they were issued prior to being phased out. Proposed new 19 TAC §233.17 would establish a new Junior Reserve Officer Training Corps: Grades 6-12 certificate.

The Texas Education Code, §21.041(b)(2), authorizes the SBEC to adopt rules that specify the classes of educator certificates to be issued, including emergency certificates. The SBEC rules in 19 TAC Chapter 233 are organized by subsection and establish the general categories of classroom teaching certificates, specific grade levels and subject areas of classroom certificates, and the general area(s) of assignments that may be taught by the holder of each certificate.

The proposed revisions to 19 TAC Chapter 233 would amend language relating to certificates that no longer are issued and would establish a new standard Junior Reserve Officer Training Corps: Grades 6-12 certificate.

§233.1. General Authority

Language would be amended to expand subsection (e) to include "oral or communication proficiency examination in the target language" to clarify all testing requirements needed for certificate areas such as bilingual, visually impaired, and deaf and hard of hearing.

§233.3. English Language Arts and Reading; Social Studies

Language would be amended in subsections (d), (f), and (h), which reference the certificates for English Language Arts and Reading: Grades 8-12, Social Studies: Grades 8-12, and History: Grades 8-12, which will be issued for the last time in 2015. The Grades 7-12 certificates replace each of these certificate areas, and the individuals issued these Grades 8-12 certificates are still eligible to teach with that credential. Remaining subsections would be relettered accordingly.

§233.4. Mathematics; Science

Language would be amended in subsections (d), (f), (h), (j), and (p), which reference the certificates for Mathematics: Grades 8-12, Science: Grades 8-12, Life Science: Grades 8-12, Physical Science: Grades 8-12, and Chemistry: Grades 8-12, which will be issued for the last time in 2015. A Grades 7-12 or Grades 6-12 certificate replaces each of these certificate areas, and the individuals issued these Grades 8-12 certificates are still eligible to teach with that credential. Remaining subsections would be relettered accordingly.

§233.5. Technology Applications and Computer Science

Language would be amended in subsection (b), Technology Applications: Grades 7-12, since the majority of educator preparation programs (EPPs) already offer the Technology Applications: Early Childhood-Grade 12 certificate. When the current Technology Applications: Grades 8-12 certificate is no longer issued, the one remaining technology applications certificate covering all grade levels should be sufficient for classroom assignment coverage. The individuals issued these Grades 8-12 certificates are still eligible to teach with that credential. Remaining subsections would be relettered accordingly.

§233.7. English as a Second Language

As a result of House Bill 218, 84th Texas Legislature, Regular Session, 2015, language would be amended to address certification requirements for teachers assigned to provide only the English component of a dual language immersion/one-way or two-way bilingual education program model for prekindergarten-Grade 6.

§233.10. Fine Arts

Language would be amended in subsection (c) to specify that Musical Theatre would be taught by the holder of a Theatre: Early Childhood-Grade 12 certificate. Language would also be amended in subsection (d) to specify that Dance, Middle School 1-3 courses for Grades 6-8 would be taught by the holder of a Dance: Grades 8-12 certificate. These proposed changes have already been incorporated into 19 TAC Chapter 231, Requirements for Public School Personnel Assignments, to ensure courses approved by the State Board of Education are included in SBEC rules and that the rules identify the appropriate teaching certificate needed for these course assignments. The Dance: Grades 8-12 certificate satisfies the requirement to teach Dance, Middle School 1-3 courses for Grades 6-8. It also ensures that all levels of middle school dance can be taught by certified dance instructors.

§233.14. Career and Technical Education (Certificates requiring experience and preparation in a skill area)

Language would be amended in subsections (f) and (g) to align required years of full-time, wage-earning experience for the Trade and Industrial Education: Grades 8-12 and Trade and Industrial Education: Grades 6-12 certificates. In October 2015, staff presented a discussion item with a new option for individuals with a bachelor's degree only in a specific work approval area to be eligible for admission into an approved EPP for Trade and Industrial Education certification. Texas Education Agency (TEA) staff has not included this option in the proposed amendment to 19 TAC §233.14 at this time to give further review of this issue, implications of this change, and the possible impact on other career and technical education areas. TEA staff will work with the Texas Higher Education Coordinating Board, TEA Curriculum staff, and other key stakeholders to fully vet these issues and will present proposed changes for further discussion and possible rule changes at a future meeting.

§233.15. Languages Other Than English

Language would be amended to delete subsection (k) that references the Secondary Latin certificate issued for the last time in 2012. Language would also be amended to add two new certificate areas for Korean: Early Childhood-Grade 12 and Portuguese: Early Childhood-Grade 12 in response to stakeholder feedback. Remaining subsections would be relettered accordingly.

§233.17. Junior Reserve Officer Training Corps

As a result of Senate Bill 1309, 84th Texas Legislature, Regular Session, 2015, proposed new 19 TAC §233.17 would be added to establish certification requirements for the new five-year standard certificate for Junior Reserve Officer Training Corps: Grades 6-12.

The proposed rule actions would have no procedural and reporting implications. Also, the proposed rule actions would have no locally maintained paperwork requirements.

FISCAL NOTE. Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed rule actions are in effect there will be no additional fiscal implications for state or local government as a result of enforcing or administering the proposed rule actions.

PUBLIC BENEFIT/COST NOTE. Mr. Franklin has determined that for the first five-year period the proposed revisions are in effect the public and student benefit anticipated as a result of the proposed revisions to 19 TAC Chapter 233 would be the continuation of guidelines for categories of classroom teaching certificates. There are no additional costs to persons required to comply with the proposed revisions.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICROBUSINESSES. 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.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins January 1, 2016, and ends February 1, 2016. The SBEC will take registered oral and written comments on the proposed revisions to 19 TAC Chapter 233 at the February 12, 2016 meeting in accordance with the SBEC board operating policies and procedures. 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 *sbecrules@tea.texas.gov* or faxed to (512) 463-5337. All requests for a public hearing on the proposed revisions submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on January 1, 2016.

STATUTORY AUTHORITY. The amendments and new section are proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.031(b), which states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose

rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(6), which requires the SBEC to propose rules that provide for special or restricted certification of educators, including certification of instructors of American Sign Language; §21.044(e), which provides the requirements that SBEC rules must specify for a person to obtain a certificate to teach a health science technology education course; §21.044(f), which provides that SBEC rules for a person to obtain a certificate to teach a health science technology education course shall not specify that a person must have a bachelor's degree or establish any other credential or teaching experience requirements that exceed the requirements under §21.044(e); §21.048(a), which specifies that the board shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board; §21.0487, as added by Senate Bill (SB) 1309, 84th Texas Legislature, Regular Session, 2015, which requires the SBEC to establish a standard Junior Reserve Officer Training Corps (JROTC) teaching certificate to provide JROTC instruction; however, a person is not required to hold a JROTC certificate to be employed by a school district as a JROTC instructor; §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A; §21.050(b), which states that the SBEC may not require more than 18 semester credit hours of education courses at the baccalaureate level for the granting of a teaching certificate; §21.050(c), which states that a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; §22.0831(f), which authorizes the SBEC to propose rules to implement the national criminal history record information review of certified educators; §29.061(b-1), as added by House Bill (HB) 218, 84th Texas Legislature, Regular Session, 2015, which requires that a teacher assigned to a bilingual education program using a dual language immersion/one-way or two-way program model be appropriately certified by the SBEC; and §29.061(b-2), as added by HB 218, 84th Texas Legislature, Regular Session, 2015, which specifies the assignment of teachers in a school district that provides bilingual education programs using a dual language immersion/one-way or two-way program model.

CROSS REFERENCE TO STATUTE. The proposed amendments and new section implement the TEC, §§21.003(a), 21.031, 21.041(b)(1)-(4) and (6), 21.044(e) and (f), 21.048(a), 21.0487, as added by SB 1309, 84th Texas Legislature, Regular Session, 2015, 21.050, 22.0831(f), and 29.061(b-1) and (b-2), as added by HB 218, 84th Texas Legislature, Regular Session, 2015.

§233.1. General Authority.

(a) In this chapter, the State Board for Educator Certification (SBEC) establishes separate certificate categories within the certificate class for the classroom teacher established under §230.33 of this title (relating to Classes of Certificates).

(b) For purposes of authorizing a person to be employed by a school district under the Texas Education Code, §21.003(a), a certificate category identifies:

(1) the content area or the special student population the holder may teach;

(2) the grade levels the holder may teach; and

(3) the earliest date the certificate may be issued.

(c) Unless provided otherwise in this title, the content area and grade level of a certificate category as well as the standards underlying the certification examination for each category are aligned with the Texas Essential Knowledge and Skills curriculum adopted by the State Board of Education.

(d) A category includes both a standard certificate and the related emergency or temporary credential. A category may comprise a standard base certificate or a supplemental certificate. A supplemental certificate may be issued only to a person who already holds the appropriate standard base certificate.

(e) A person must satisfy all applicable requirements and conditions under this title and other law to be issued a certificate in a category. A person seeking an initial standard certification must pass the appropriate grade level of pedagogy and professional responsibility certification examination, [~~and~~] the appropriate content subject examination(s), and, as applicable, the appropriate oral or communication proficiency examination in the target language for the certification sought as established by the SBEC. A person completing requirements for a standard certificate using a score on an examination that has been eliminated must apply and pay for the certification not later than one year from the last test administration of the deleted examination. Exceptions may be granted for a period of two years after the elimination of the examination for catastrophic illness of the educator or an immediate family member or military service of the applicant.

(f) A person seeking a languages other than English certificate valid for Early Childhood-Grade 12 specified in §233.15 of this title (relating to Languages Other Than English) must successfully complete an approved oral or communication proficiency examination in the target language in addition to the appropriate grade level of pedagogy and professional responsibility and content subject examinations as specified in subsection (e) of this section.

(g) A holder of a certificate valid for Grades 4-8 may teach technology applications in Grades 4-8 if integrated within an academic course or through interdisciplinary methodology in those subjects that the individual is certified to teach. The school district is responsible for ensuring that the educator has the appropriate technology applications knowledge and skills to teach the course(s) to which he or she is assigned. If Technology Applications is taught as a separate course, the educator shall be required to hold an appropriate technology applications certificate as specified in §233.5 of this title (relating to Technology Applications and Computer Science).

(h) The general assignment descriptions in this chapter are subject to the specific provisions for the assignment of a holder of a certificate in Chapter 231 of this title (relating to Requirements for Public School Personnel Assignments), and in the event of any conflict with this chapter, Chapter 231 of this title shall prevail.

§233.3. English Language Arts and Reading; Social Studies.

(a) English Language Arts and Reading: Grades 4-8. The English Language Arts and Reading: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the English Language Arts and Reading: Grades 4-8 certificate may teach English language arts and reading in Grades 4-8.

(b) Social Studies: Grades 4-8. The Social Studies: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The

holder of the Social Studies: Grades 4-8 certificate may teach social studies in Grades 4-8.

(c) English Language Arts and Reading/Social Studies: Grades 4-8. The English Language Arts and Reading/Social Studies: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the English Language Arts and Reading/Social Studies: Grades 4-8 certificate may teach English language arts and reading, and social studies in Grades 4-8.

[~~(d) English Language Arts and Reading: Grades 8-12. The English Language Arts and Reading: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the English Language Arts and Reading: Grades 8-12 certificate may teach English language arts and reading in Grade 8 and all English language arts and reading courses in Grades 9-12, excluding journalism and speech courses. A candidate must meet the requirements for an English Language Arts and Reading: Grades 8-12 certificate by August 31, 2015. All applications must be complete and received by the Texas Education Agency (TEA) by October 30, 2015.~~]

(d) [~~(e)~~] English Language Arts and Reading: Grades 7-12. The English Language Arts and Reading: Grades 7-12 certificate may be issued no earlier than September 1, 2013. The holder of the English Language Arts and Reading: Grades 7-12 certificate may teach English language arts and reading in Grades 7 and 8 and all English language arts and reading courses in Grades 9-12, excluding journalism and speech courses.

[~~(f) Social Studies: Grades 8-12. The Social Studies: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the Social Studies: Grades 8-12 certificate may teach social studies in Grade 8 and all social studies and economics courses in Grades 9-12. A candidate must meet the requirements for a Social Studies: Grades 8-12 certificate by August 31, 2015. All applications must be complete and received by the TEA by October 30, 2015.~~]

(e) [~~(g)~~] Social Studies: Grades 7-12. The Social Studies: Grades 7-12 certificate may be issued no earlier than September 1, 2013. The holder of the Social Studies: Grades 7-12 certificate may teach social studies in Grades 7 and 8 and all social studies and economics courses in Grades 9-12.

[~~(h) History: Grades 8-12. The History: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the History: Grades 8-12 certificate may teach social studies in Grade 8 and all history courses in Grades 9-12. A candidate must meet the requirements for a History: Grades 8-12 certificate by August 31, 2015. All applications must be complete and received by the TEA by October 30, 2015.~~]

(f) [~~(i)~~] History: Grades 7-12. The History: Grades 7-12 certificate may be issued no earlier than September 1, 2013. The holder of the History: Grades 7-12 certificate may teach social studies in Grades 7 and 8 and all history courses in Grades 9-12.

(g) [~~(j)~~] Journalism: Grades 8-12. The Journalism: Grades 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Journalism: Grades 8-12 certificate is eligible to teach all journalism courses in Grades 8-12. A candidate must meet the requirements for a Journalism: Grades 8-12 certificate by August 31, 2016. All applications must be complete and received by the TEA by October 30, 2016.

(h) [~~(k)~~] Journalism: Grades 7-12. The Journalism: Grades 7-12 certificate may be issued no earlier than September 1, 2013. The holder of the Journalism: Grades 7-12 certificate is eligible to teach all journalism courses in Grades 7-12.

(i) [~~(l)~~] Speech: Grades 7-12. The Speech: Grades 7-12 certificate may be issued no earlier than November 1, 2010. The holder of the Speech: Grades 7-12 certificate is eligible to teach all speech courses in Grades 7-12.

§233.4. Mathematics; Science.

(a) Mathematics: Grades 4-8. The Mathematics: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Mathematics: Grades 4-8 certificate may teach mathematics in Grades 4-8, including Algebra I for high school credit.

(b) Science: Grades 4-8. The Science: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Science: Grades 4-8 certificate may teach science in Grades 4-8.

(c) Mathematics/Science: Grades 4-8. The Mathematics/Science: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Mathematics/Science: Grades 4-8 certificate may teach mathematics and science in Grades 4-8.

[~~(d) Mathematics: Grades 8-12. The Mathematics: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the Mathematics: Grades 8-12 certificate may teach mathematics in Grade 8 and all mathematics courses in Grades 9-12. A candidate must meet the requirements for a Mathematics: Grades 8-12 certificate by August 31, 2015. All applications must be complete and received by the Texas Education Agency (TEA) by October 30, 2015.~~]

(d) [~~(e)~~] Mathematics: Grades 7-12. The Mathematics: Grades 7-12 certificate may be issued no earlier than September 1, 2013. The holder of the Mathematics: Grades 7-12 certificate may teach mathematics in Grades 7 and 8 and all mathematics courses in Grades 9-12.

[~~(f) Science: Grades 8-12. The Science: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the Science: Grades 8-12 certificate may teach science in Grade 8 and all science courses in Grades 9-12. A candidate must meet the requirements for a Science: Grades 8-12 certificate by August 31, 2015. All applications must be complete and received by the TEA by October 30, 2015.~~]

(e) [~~(g)~~] Science: Grades 7-12. The Science: Grades 7-12 certificate may be issued no earlier than September 1, 2013. The holder of the Science: Grades 7-12 certificate may teach science in Grades 7 and 8 and all science courses in Grades 9-12.

[~~(h) Life Science: Grades 8-12. The Life Science: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the Life Science: Grades 8-12 certificate may teach science in Grade 8 and all biology, environmental systems, environmental science, and aquatic science courses in Grades 9-12. A candidate must meet the requirements for a Life Science: Grades 8-12 certificate by August 31, 2015. All applications must be complete and received by the TEA by October 30, 2015.~~]

(f) [~~(i)~~] Life Science: Grades 7-12. The Life Science: Grades 7-12 certificate may be issued no earlier than September 1, 2013. The holder of the Life Science: Grades 7-12 certificate may teach science in Grades 7 and 8 and all biology, environmental systems, environmental science, and aquatic science courses in Grades 9-12.

[~~(j) Physical Science: Grades 8-12. The Physical Science: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the Physical Science: Grades 8-12 certificate is eligible to teach science in Grade 8 and all physics and chemistry courses, including Integrated Physics and Chemistry, in Grades 9-12. A candidate must meet the requirements for a Physical Science: Grades 8-12~~]

~~certificate by August 31, 2015. All applications must be complete and received by the TEA by October 30, 2015.]~~

(g) [~~(k)~~] Physical Science: Grades 6-12. The Physical Science: Grades 6-12 certificate may be issued no earlier than September 1, 2013. The holder of the Physical Science: Grades 6-12 certificate is eligible to teach science in Grades 6-8 and all physics and chemistry courses, including Integrated Physics and Chemistry, in Grades 9-12.

(h) [~~(l)~~] Physics/Mathematics: Grades 8-12. The Physics/Mathematics: Grades 8-12 certificate may be issued no earlier than September 1, 2004. The holder of the Physics/Mathematics: Grades 8-12 certificate is eligible to teach mathematics in Grade 8 and all mathematics courses in Grades 9-12. The holder may also teach science in Grade 8 and all physics courses in Grades 9-12. A candidate must meet the requirements for a Physics/Mathematics: Grades 8-12 certificate by August 31, 2016. All applications must be complete and received by the TEA by October 30, 2016.

(i) [~~(m)~~] Physics/Mathematics: Grades 7-12. The Physics/Mathematics: Grades 7-12 certificate may be issued no earlier than September 1, 2014. The holder of the Physics/Mathematics: Grades 7-12 certificate is eligible to teach mathematics in Grades 7 and 8 and all mathematics courses in Grades 9-12. The holder may also teach science in Grades 7 and 8 and all physics courses in Grades 9-12.

(j) [~~(n)~~] Mathematics/Physical Science/Engineering: Grades 8-12. The Mathematics/Physical Science/Engineering: Grades 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Mathematics/Physical Science/Engineering: Grades 8-12 certificate is eligible to teach mathematics in Grade 8 and all mathematics courses in Grades 9-12. The holder is also eligible to teach science in Grade 8 and all physics and chemistry courses, including Integrated Physics and Chemistry, in Grades 9-12. A candidate must meet the requirements for a Mathematics/Physical Science/Engineering: Grades 8-12 certificate by August 31, 2016. All applications must be complete and received by the TEA by October 30, 2016.

(k) [~~(o)~~] Mathematics/Physical Science/Engineering: Grades 6-12. The Mathematics/Physical Science/Engineering: Grades 6-12 certificate may be issued no earlier than September 1, 2014. The holder of the Mathematics/Physical Science/Engineering: Grades 6-12 certificate is eligible to teach mathematics in Grades 6-8 and all mathematics courses in Grades 9-12. The holder is also eligible to teach science in Grades 6-8 and all physics and chemistry courses, including Integrated Physics and Chemistry, in Grades 9-12.

~~[(p) Chemistry: Grades 8-12. The Chemistry: Grades 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Chemistry: Grades 8-12 certificate is eligible to teach science in Grade 8 and all chemistry courses in Grades 9-12. A candidate must meet the requirements for a Chemistry: Grades 8-12 certificate by August 31, 2015. All applications must be complete and received by the TEA by October 30, 2015.]~~

(l) [~~(q)~~] Chemistry: Grades 7-12. The Chemistry: Grades 7-12 certificate may be issued no earlier than September 1, 2013. The holder of the Chemistry: Grades 7-12 certificate is eligible to teach science in Grades 7 and 8 and all chemistry courses in Grades 9-12.

§233.5. Technology Applications and Computer Science.

(a) Technology Applications: Grades 8-12. The Technology Applications: Grades 8-12 certificate may be issued no earlier than June 1, 2001. The holder of the Technology Applications: Grades 8-12 certificate may teach Technology Applications in Grade 8 and the following technology applications courses in Grades 9-12: desktop publishing, digital graphics/animation, multimedia, video technology, web mastering, and independent study in technology applications. A candidate must meet the requirements for a Technology Applications: Grades 8-12 certificate by August 31, 2018. All applications must be complete and received by the Texas Education Agency by October 30, 2018.

~~[(b) Technology Applications: Grades 7-12. The Technology Applications: Grades 7-12 certificate may be issued no earlier than September 1, 2014. The holder of the Technology Applications: Grades 7-12 certificate may teach Technology Applications in Grades 7 and 8 and the following technology applications courses in Grades 9-12: desktop publishing, digital graphics/animation, multimedia, video technology, web mastering, and independent study in technology applications.]~~

(b) [~~(c)~~] Technology Applications: Early Childhood-Grade 12. The Technology Applications: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2002. The holder of the Technology Applications: Early Childhood-Grade 12 certificate may teach the technology applications curriculum in prekindergarten, kindergarten, and Grades 1-12, with the exception of Computer Science I and II.

(c) [~~(d)~~] Computer Science: Grades 8-12. The Computer Science: Grades 8-12 certificate may be issued no earlier than June 1, 2001. The holder of the Computer Science: Grades 8-12 certificate may teach Computer Science I and II in Grades 8-12.

§233.7. English as a Second Language.

(a) English as a Second Language Generalist: Early Childhood-Grade 6. The English as a Second Language Generalist: Early Childhood-Grade 6 certificate may be issued no earlier than September 1, 2008. The holder of the English as a Second Language Generalist: Early Childhood-Grade 6 certificate may teach in an English as a second language program in prekindergarten-Grade 6. The holder of an English as a Second Language Generalist: Early Childhood-Grade 6 certificate may also teach the component of a dual language immersion/one-way or two-way bilingual education program model that is provided in English for prekindergarten-Grade 6. The holder of the English as a Second Language Generalist: Early Childhood-Grade 6 certificate may teach the same content areas, in either an English as a second language or a general education program, as the holder of the Generalist: Early Childhood-Grade 6 certificate may teach under §233.2(a) of this title (relating to Generalist). A candidate must meet the requirements for an English as Second Language Generalist: Early Childhood-Grade 6 certificate by August 31, 2017. All applications must be complete and received by the Texas Education Agency (TEA) by October 30, 2017.

(b) English as a Second Language Generalist: Grades 4-8. The English as a Second Language Generalist: Grades 4-8 certificate may be issued no earlier than September 1, 2003. The holder of the English as a Second Language Generalist: Grades 4-8 certificate may teach in an English as a second language program in Grades 4-8. The holder of an English as a Second Language Generalist: Grades 4-8 certificate may also teach the component of a dual language immersion/one-way or two-way bilingual education program model that is provided in English for Grades 4-6 only. The holder of the English as a Second Language Generalist: Grades 4-8 certificate may teach the same content areas, in either an English as a second language or a general education program, as the holder of the Generalist: Grades 4-8 certificate may teach under §233.2(b) of this title. A candidate must meet the requirements for an English as a Second Language Generalist: Grades 4-8 certificate by August 31, 2017. All applications must be complete and received by the TEA by October 30, 2017.

(c) English as a Second Language Supplemental. The English as a Second Language Supplemental certificate may be issued no earlier than September 1, 2003. The holder of the English as a Second Language Supplemental certificate may teach in an English as a second language program at the same grade levels and in the same content area(s) of the holder's base certificate. The holder of an English as a Second Language Supplemental certificate may also teach the component of a dual language immersion/one-way or two-way bilingual program model that is provided in English for prekindergarten-Grade 6.

§233.10. Fine Arts.

(a) Music: Early Childhood-Grade 12. The Music: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2004. The holder of the Music: Early Childhood-Grade 12 certificate is eligible to teach music in a prekindergarten program, in kindergarten, and in Grades 1-12.

(b) Art: Early Childhood-Grade 12. The Art: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005. The holder of the Art: Early Childhood-Grade 12 certificate is eligible to teach art in a prekindergarten program, in kindergarten, and in Grades 1-12.

(c) Theatre: Early Childhood-Grade 12. The Theatre: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005. The holder of the Theatre: Early Childhood-Grade 12 certificate is eligible to teach theatre in a prekindergarten program, in kindergarten, and in Grades 1-12. The holder of the Theatre: Early Childhood-Grade 12 certificate is also eligible to teach Musical Theatre, Grades 9-12.

(d) Dance: Grades 8-12. The Dance: Grades 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Dance: Grades 8-12 certificate is eligible to teach all dance courses in Grades 8-12. The holder of the Dance: Grades 8-12 certificate is also eligible to teach Dance, Middle School 1-3 courses for Grades 6-8.

§233.14. Career and Technical Education (Certificates requiring experience and preparation in a skill area).

(a) All individuals seeking a career and technical education certificate specified in this section must have the required number of years of qualified work experience and preparation in a skill area approved in accordance with the provisions of subsection (h) of this section prior to issuance of the certificate and assignment in a Texas school.

(b) Marketing Education: Grades 8-12. The Marketing Education: Grades 8-12 certificate may be issued no earlier than September 1, 2005. A candidate must meet the requirements for a Marketing Education: Grades 8-12 certificate by August 31, 2017. All applications must be complete and received by the Texas Education Agency (TEA) by October 30, 2017. The holder of the Marketing Education: Grades 8-12 certificate is eligible to teach all marketing education courses in Grades 8-12. A candidate for the Marketing Education: Grades 8-12 certificate must:

(1) hold a bachelor's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board (THECB); and

(2) have two years of full-time wage-earning experience in a marketing occupation as specified in subsection (h) of this section.

(c) Marketing: Grades 6-12. The Marketing: Grades 6-12 certificate may be issued no earlier than September 1, 2014. The holder of the Marketing: Grades 6-12 certificate is eligible to teach all marketing courses in Grades 6-12. A candidate for the Marketing: Grades 6-12 certificate must:

(1) hold a bachelor's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB; and

(2) have two years of full-time wage-earning experience in a marketing occupation as specified in subsection (h) of this section.

(d) Health Science Technology Education: Grades 8-12. A standard Health Science Technology Education: Grades 8-12 certificate shall be based on experience and academic preparation in the skill area. A candidate must meet the requirements for a standard Health Science Technology Education: Grades 8-12 certificate by August 31, 2017. All applications must be complete and received by the TEA by October 30, 2017.

(1) The standard Health Science Technology Education: Grades 8-12 certificate shall require the following:

(A) an associate or more advanced degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB;

(B) current licensure, certification, or registration by a nationally recognized accrediting agency as a health professions practitioner; and

(C) approval, by the certification officer of an approved educator preparation program (EPP), of two years of wage-earning experience using the licensure requirement described in subparagraph (B) of this paragraph.

(2) The standard Health Science Technology Education: Grades 8-12 certificate curricula shall be based on the standards approved by the State Board for Educator Certification. A candidate for this certificate must pass the appropriate certification examinations.

(e) Health Science: Grades 6-12 certificate. The standard Health Science: Grades 6-12 certificate may be issued no earlier than September 1, 2014. A standard Health Science: Grades 6-12 certificate shall be based on experience and academic preparation in the skill area.

(1) The standard Health Science: Grades 6-12 certificate shall require the following:

(A) an associate or more advanced degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB;

(B) current licensure, certification, or registration by a nationally recognized accrediting agency as a health professions practitioner; and

(C) approval, by the certification officer of an approved EPP, of two years of full-time wage-earning experience using the licensure requirement described in subparagraph (B) of this paragraph.

(2) The standard Health Science: Grades 6-12 certificate curricula shall be based on the standards approved by the State Board for Educator Certification. A candidate for this certificate must pass the appropriate certification examinations.

(f) Trade and Industrial Education: Grades 8-12 certificate. A standard Trade and Industrial Education: Grades 8-12 certificate shall be based on academic preparation and experience in the skill areas to be taught and completion of specified pedagogy and professional responsibilities training. A candidate must meet the requirements for a standard Trade and Industrial Education: Grades 8-12 certificate by

August 31, 2016. All applications must be complete and received by the TEA by October 30, 2016.

(1) The standard Trade and Industrial Education: Grades 8-12 certificate shall require the following academic preparation and wage-earning experience.

(A) Option I. An individual must:

(i) hold a bachelor's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB; and

(ii) have two [~~three~~] years of full-time wage-earning experience within the past ten [~~eight~~] years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an EPP approved to prepare teachers for the Trade and Industrial Education: Grades 8-12 certificate. Up to 18 months of the wage-earning experience can be met through a formal documented internship.

(B) Option II. An individual must:

(i) hold an associate degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB; and

(ii) have two [~~three~~] years of full-time wage-earning experience within the past ten [~~eight~~] years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an EPP approved to prepare teachers for the Trade and Industrial Education: Grades 8-12 certificate.

(C) Option III. An individual must:

(i) hold a high school diploma or the equivalent; and

(ii) have five years of full-time wage-earning experience within the past eight years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an EPP approved to prepare teachers for the Trade and Industrial Education: Grades 8-12 certificate.

(2) The standard Trade and Industrial Education: Grades 8-12 certificate shall require current licensure, certification, or registration by a nationally recognized accrediting agency based on a recognized test or measurement. If the licensure, certification, or registration is not based on a recognized test or measurement, then passing the appropriate National Occupational Competency Testing Institute (NOCTI) assessment is required. A cosmetology teacher must hold a current cosmetology instructor license issued by the Texas Department of Licensing and Regulation.

(3) An individual must complete one year of creditable classroom teaching experience, as defined in Chapter 153, Subchapter CC, of this title (relating to Commissioner's Rules on Creditable Years of Service), on an emergency permit or probationary certificate in the specific area of trade and industrial education.

(4) The holder of a standard or provisional Trade and Industrial Education: Grades 8-12 certificate or Vocational Trades and Industry certificate may be approved for additional trade and industrial education assignments provided he or she meets the required number of years of wage-earning experience as indicated in this subsection. Work experience must be approved according to the provisions of this subsection. The EPP must submit a statement of qualifications to the Texas Education Agency (TEA) within 60 calendar days of approval.

(g) Trade and Industrial Education: Grades 6-12 certificate. The certificate may be issued no earlier than September 1, 2014. A standard Trade and Industrial Education: Grades 6-12 certificate shall be based on academic preparation and experience in the skill areas to be taught and completion of specified pedagogy and professional responsibilities training.

(1) The standard Trade and Industrial Education: Grades 6-12 certificate shall require the following academic preparation and wage-earning experience.

(A) Option I. An individual must:

(i) hold a bachelor's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB; and

(ii) have two [~~three~~] years of full-time wage-earning experience within the past ten [~~eight~~] years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an EPP approved to prepare teachers for the Trade and Industrial Education: Grades 6-12 certificate. Up to 18 months of the wage-earning experience can be met through a formal documented internship.

(B) Option II. An individual must:

(i) hold an associate degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB; and

(ii) have two [~~three~~] years of full-time wage-earning experience within the past ten [~~eight~~] years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an EPP approved to prepare teachers for the Trade and Industrial Education: Grades 6-12 certificate.

(C) Option III. An individual must:

(i) hold a high school diploma or the equivalent; and

(ii) have five years of full-time wage-earning experience within the past ten [~~eight~~] years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an EPP approved to prepare teachers for the Trade and Industrial Education: Grades 6-12 certificate.

(2) The standard Trade and Industrial Education: Grades 6-12 certificate shall require current licensure, certification, or registration by a nationally recognized accrediting agency based on a recognized test or measurement. If the licensure, certification, or registration is not based on a recognized test or measurement, then passing the appropriate NOCTI assessment is required. A cosmetology teacher must hold a current cosmetology instructor license issued by the Texas Department of Licensing and Regulation.

(3) An individual must complete one year of creditable classroom teaching experience, as defined in Chapter 153, Subchapter CC, of this title, on an emergency permit or probationary certificate in the specific area of trade and industrial education.

(4) The holder of a standard or provisional Trade and Industrial Education: Grades 6-12 certificate or Vocational Trades and Industry certificate may be approved for additional trade and industrial education assignments provided he or she meets the required number of years of wage-earning experience as indicated in this subsection. Work experience must be approved according to the provisions of this

subsection. The EPP must submit a statement of qualifications to the TEA within 60 calendar days of approval.

(h) Career and technical education certificates. Approval of career and technical education certificates in this section shall be based on prior experience and preparation in a skill area.

(1) Prospective career and technical education teachers shall submit a statement of qualifications detailing prior experience and skill area preparation to the EPP approved to prepare teachers for the career and technical education certificate sought. The certification officer of the EPP shall review the applicant's statement of qualifications to determine whether the applicant meets the appropriate approval criteria specified in this subsection. In the case of an educator who otherwise qualifies for certification by examination in Marketing Education: Grades 8-12 and Marketing: Grades 6-12, the review and approval of required work experience may be performed by a certified school administrator.

(2) Under this subsection, 12 months of wage-earning experience consisting of at least 40 hours per week shall equal one year of full-time experience. Wage-earning experience consisting of less than 40 hours, but at least 20 hours per week, shall be calculated at a 50% rate in determining years of full-time experience. Wage-earning experience consisting of less than 20 hours per week shall not be considered acceptable in determining full-time experience.

(3) Postsecondary and proprietary school teaching experience in the specific occupational area for which the candidate is seeking certification may be counted on a year-for-year basis in lieu of on-the-job experience. Proprietary schools must be accredited or otherwise approved by the Texas Workforce Commission. Recency of experience requirements must be met, as well as current licensure, certification, or registration by a state or nationally recognized accrediting agency.

§233.15. Languages Other Than English.

(a) American Sign Language: Early Childhood-Grade 12. The American Sign Language: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005. The holder of the American Sign Language: Early Childhood-Grade 12 certificate is eligible to teach American Sign Language in a prekindergarten program, in kindergarten, and in Grades 1-12.

(b) Arabic: Early Childhood-Grade 12. The Arabic: Early Childhood-Grade 12 certificate may be issued no earlier than October 15, 2007. The holder of the Arabic: Early Childhood-Grade 12 certificate is eligible to teach Arabic in a prekindergarten program, in kindergarten, and in Grades 1-12.

(c) Chinese: Early Childhood-Grade 12. The Chinese: Early Childhood-Grade 12 certificate may be issued no earlier than October 15, 2007. The holder of the Chinese: Early Childhood-Grade 12 certificate is eligible to teach Chinese in a prekindergarten program, in kindergarten, and in Grades 1-12.

(d) French: Early Childhood-Grade 12. The French: Early Childhood-Grade 12 certificate may be issued no earlier than November 1, 2009. The holder of the French: Early Childhood-Grade 12 certificate is eligible to teach French in a prekindergarten program, in kindergarten, and in Grades 1-12.

(e) German: Early Childhood-Grade 12. The German: Early Childhood-Grade 12 certificate may be issued no earlier than November 1, 2009. The holder of the German: Early Childhood-Grade 12 certificate is eligible to teach German in a prekindergarten program, in kindergarten, and in Grades 1-12.

(f) Hindi: Early Childhood-Grade 12. The Hindi: Early Childhood-Grade 12 certificate may be issued no earlier than November 1, 2010. The holder of the Hindi: Early Childhood-Grade 12 certificate is eligible to teach Hindi in a prekindergarten program, in kindergarten, and in Grades 1-12.

(g) Italian: Early Childhood-Grade 12. The Italian: Early Childhood-Grade 12 certificate may be issued no earlier than November 1, 2010. The holder of the Italian: Early Childhood-Grade 12 certificate is eligible to teach Italian in a prekindergarten program, in kindergarten, and in Grades 1-12.

(h) Japanese: Early Childhood-Grade 12. The Japanese: Early Childhood-Grade 12 certificate may be issued no earlier than October 15, 2007. The holder of the Japanese: Early Childhood-Grade 12 certificate is eligible to teach Japanese in a prekindergarten program, in kindergarten, and in Grades 1-12.

(i) Korean: Early Childhood-Grade 12. The Korean: Early Childhood-Grade 12 certificate may be issued no earlier than June 1, 2016. The holder of the Korean: Early Childhood-Grade 12 certificate is eligible to teach Korean in a prekindergarten program, in kindergarten, and in Grades 1-12.

(j) [~~(i)~~] Latin: Early Childhood-Grade 12. The Latin: Early Childhood-Grade 12 certificate may be issued no earlier than January 1, 2010. The holder of the Latin: Early Childhood-Grade 12 certificate is eligible to teach Latin in a prekindergarten program, in kindergarten, and in Grades 1-12.

(k) Portuguese: Early Childhood-Grade 12. The Portuguese: Early Childhood-Grade 12 certificate may be issued no earlier than June 1, 2016. The holder of the Portuguese: Early Childhood-Grade 12 certificate is eligible to teach Portuguese in a prekindergarten program, in kindergarten, and in Grades 1-12.

(l) [~~(j)~~] Russian: Early Childhood-Grade 12. The Russian: Early Childhood-Grade 12 certificate may be issued no earlier than October 15, 2007. The holder of the Russian: Early Childhood-Grade 12 certificate is eligible to teach Russian in a prekindergarten program, in kindergarten, and in Grades 1-12.

~~[(k) Secondary Latin. The Secondary Latin certificate shall expire on September 1, 2012.]~~

(m) [~~(l)~~] Spanish: Early Childhood-Grade 12. The Spanish: Early Childhood-Grade 12 certificate may be issued no earlier than November 1, 2009. The holder of the Spanish: Early Childhood-Grade 12 certificate is eligible to teach Spanish in a prekindergarten program, in kindergarten, and in Grades 1-12.

(n) [~~(m)~~] Turkish: Early Childhood-Grade 12. The Turkish: Early Childhood-Grade 12 certificate may be issued no earlier than November 1, 2010. The holder of the Turkish: Early Childhood-Grade 12 certificate is eligible to teach Turkish in a prekindergarten program, in kindergarten, and in Grades 1-12.

(o) [~~(n)~~] Urdu: Early Childhood-Grade 12. The Urdu: Early Childhood-Grade 12 certificate may be issued no earlier than November 1, 2010. The holder of the Urdu: Early Childhood-Grade 12 certificate is eligible to teach Urdu in a prekindergarten program, in kindergarten, and in Grades 1-12.

(p) [~~(o)~~] Vietnamese: Early Childhood-Grade 12. The Vietnamese: Early Childhood-Grade 12 certificate may be issued no earlier than October 15, 2007. The holder of the Vietnamese: Early Childhood-Grade 12 certificate is eligible to teach Vietnamese in a prekindergarten program, in kindergarten, and in Grades 1-12.

§233.17. Junior Reserve Officer Training Corps.

Junior Reserve Officer Training Corps: Grades 6-12 certificate. The holder of the Junior Reserve Officer Training Corps: Grades 6-12 certificate is eligible to teach all junior reserve officer training courses in Grades 6-12. A candidate for the standard Junior Reserve Officer Training Corps: Grades 6-12 certificate must:

(1) hold a Junior Reserve Officer Training Corps instructor certificate issued by one of the military branches;

(2) complete an approved educator preparation program;

(3) hold a bachelor's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board; and

(4) obtain a passing performance on the pedagogy and professional responsibilities certification 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.

Filed with the Office of the Secretary of State on December 18, 2015.

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Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Earliest possible date of adoption: January 31, 2016
For further information, please call: (512) 475-1497

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CHAPTER 249. DISCIPLINARY PROCEEDINGS, SANCTIONS, AND CONTESTED CASES

The State Board for Educator Certification (SBEC) proposes amendments to 19 TAC §§249.5, 249.15, 249.17, and 249.35, concerning disciplinary proceedings, sanctions, and contested cases. The SBEC rules in Chapter 249 establish guidelines and procedures for conducting investigations and disciplinary actions relating to educator misconduct. The proposed amendments would create more specific penalty guidelines for Texas Education Agency (TEA) staff to follow in settling or prosecuting educator discipline cases. In addition, the proposed amendments would set out the process that the SBEC will use when the State Office of Administrative Hearings (SOAH) dismisses and remands a case in accordance with Texas Government Code, §2001.058(d-1), as amended by House Bill (HB) 2154, 84th Texas Legislature, Regular Session, 2015, after a respondent fails to appear for a contested case hearing.

On March 6, 2015, the SBEC established a Committee on Educator Discipline (Committee), and on August 7, 2015, the SBEC charged the Committee with creating more specific penalty guidelines for TEA staff to follow in settling or prosecuting educator discipline cases. The Committee met on October 15, 2015, and developed recommendations for penalty guidance. The proposed amendments to 19 TAC §249.5 and §249.17 reflect the recommendations of the Committee on how to improve and clarify the SBEC's rules regarding penalties for certified educators subject to discipline.

The proposed amendment to 19 TAC §249.5 would allow the SBEC to impose higher sanctions for certified administrators subject to discipline than for teachers and paraprofessionals because administrators have, as a result of their positions of authority over both students and other educators, an even greater obligation to maintain good moral character than teachers and paraprofessionals.

The proposed amendment to 19 TAC §249.15 would allow the SBEC a clearer and more efficient means to discipline educators who violate SBEC disciplinary orders.

The proposed amendment to 19 TAC §249.17 would clarify the factors that the SBEC considers as mitigating or enhancing factors in making sanctioning decisions for educators subject to discipline; set minimum sanctions for contract abandonment, felony-level conduct, misdemeanor-level conduct, and test security violations to achieve more consistency in sanctions; and clarify the factors that SBEC considers as good cause for contract abandonment.

With regard to contract abandonment, if an educator has worked at a school district after abandoning a contract at another school district, the educator's suspension would begin at the start of the next school year so as to neither harm the students the educator is instructing nor to allow the educator to use summer months to count as suspension time.

For educators who have not worked as educators while on felony community supervision or deferred adjudication, the suspension sanction in an agreed settlement order would run concurrently with the period the individual is on felony community supervision or deferred adjudication, because an educator on felony community supervision or deferred adjudication is not an appropriate role model worthy to instruct the students of Texas. For individuals who continue to work while on felony community supervision or deferred adjudication, the period of the suspension sanction in an agreed settlement order would be equal to the court-ordered term of felony community supervision or deferred adjudication, but would begin from the effective date of the agreed order so that the educator serves the same length of suspension as for an individual who had not worked as an educator while on felony community supervision or deferred adjudication.

If the educator has completed felony community supervision or deferred adjudication before the SBEC disciplines the educator, the educator's suspension sanction in an agreed final order would be at least half as long as the initial court-ordered term of felony community supervision or deferred adjudication to prevent inequities that could be caused by the length of time required for the SBEC disciplinary process to run its course, while still requiring the educator to serve a suspension as a deterrent punishment for the educator's misconduct.

In accordance with Texas Government Code, §2001.058(d-1), as amended by HB 2154, 84th Texas Legislature, Regular Session, 2015, the proposed amendment to 19 TAC §249.35 would allow an administrative law judge to dismiss and remand a contested case to the SBEC without issuing a proposal for decision when a licensee defaults by failing to appear at a contested case hearing before the SOAH. The proposed amendment would create procedures for the SBEC to issue a default order in such situations.

The proposed amendments would have no additional procedural and reporting implications. Also, the proposed amendments would have no additional locally maintained paperwork requirements.

FISCAL NOTE. Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed amendments are in effect there will be no additional fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT/COST NOTE. Mr. Franklin has determined that for the first five-year period the proposed amendments are in effect the public and student benefit anticipated as a result of the proposed amendments to 19 TAC §§249.5, 249.15, 249.17, and 249.35 would be the continued effective regulation and discipline of certified educators to ensure that certified educators are qualified, safe, and worthy to instruct the students of Texas. There are no additional costs to persons required to comply with the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICROBUSINESSES. 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.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins January 1, 2016, and ends February 1, 2016. The SBEC will take registered oral and written comments on the proposed amendments to 19 TAC §§249.5, 249.15, 249.17, and 249.35 at the February 12, 2016, meeting in accordance with the SBEC board operating policies and procedures. 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 *sbecrules@tea.texas.gov* or faxed to (512) 463-5337. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on January 1, 2016.

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §249.5

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.040(6), which allows the SBEC authority to develop and implement policies that define responsibilities of the SBEC; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by the Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.044(a), which authorizes the SBEC to propose rules establishing the training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program and specify the minimum academic qualifications required for a certificate; §21.058, which provides for the revocation of educator certificates based on conviction of certain offenses; §21.060, which allows the SBEC to suspend or revoke educator certificates based on conviction for certain offenses related to the duties and responsibilities of the education profession; §22.082, which states that the SBEC shall subscribe to the criminal history clearinghouse as provided by the Texas Government Code, §411.0845, and may obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under the TEC, Chapter 21, Subchapter B; §22.0831, which requires the SBEC to conduct a national criminal history record information review of all applicants for or holders of educator certificates who are employed in Texas schools; §22.085, which allows the SBEC to impose a sanction on an educator who does not discharge an employee or refuse to hire an applicant if the educator knows or should have known, through a criminal history record information review, that the employee or applicant has been convicted of a criminal offense, and requires that school district superintendents and chief operating officers of open-enrollment charter schools certify to the commissioner that the district or school has not failed to discharge or refused to hire any individuals with criminal history; and §22.087, as amended by House Bill (HB) 1783, 84th Texas Legislature, Regular Session, 2015, which requires superintendents to notify the SBEC whenever they obtain knowledge that an applicant for or holder of an educator certificate has a reported criminal history; the Texas Government Code, §411.087, as amended by Senate Bill (SB) 1902, 84th Texas Legislature, Regular Session, 2015, which authorizes the SBEC to receive criminal history record information from the Federal Bureau of Investigation; and §411.090, which allows the SBEC to obtain criminal history record information from the Department of Public Safety of the State of Texas; and the Texas Occupations Code, §53.021(a), as amended by HB 2299, 84th Texas Legislature, Regular Session, 2015, effective January 1, 2017, which provides that a licensing agency may suspend, revoke, or deny a license to a person convicted of an offense related to the duties and responsibilities of the education profession and certain other offenses; §53.022, which provides the factors to be considered by the SBEC in determining whether a criminal conviction relates to the duties and responsibilities of the education profession; §53.023, which provides additional factors to be considered by the SBEC in determining the fitness of a person convicted of a crime to hold an educator certificate; §53.024, which provides that licensing proceedings brought pursuant to Chapter 53 are governed by the Administrative Procedure Act; §53.025, which requires the SBEC to issue guidelines providing the reasons for determinations made by the SBEC pursuant to Chapter 53; §53.051, which requires the SBEC to notify a person in writing of the reasons for a denial, suspension, or revocation of a certificate because of a prior conviction of a crime and the procedures for appeal of that decision; and §53.052, which allows a person who has exhausted administrative remedies to file an action for judicial review within 30 days after the SBEC decision becomes final and appealable.

CROSS REFERENCE TO STATUTE. The proposed amendment implements the TEC, §§21.031(a); 21.040(6); 21.041(a) and (b)(1), (4), (7), and (8); 21.044(a); 21.058; 21.060; 22.082; 22.0831; 22.085; and 22.087, as amended by HB 1783, 84th Texas Legislature, Regular Session, 2015; the Texas Government Code, §411.087, as amended by SB 1902, 84th Texas Legislature, Regular Session, 2015; and §411.090; and Texas Occupations Code, §§53.021(a), as amended by HB 2299, 84th Texas Legislature, Regular Session, 2015, effective January 1, 2017; 53.022 - 53.025; 53.051; and 53.052.

§249.5. Purpose; Policy Governing Disciplinary Proceedings.

(a) Purpose. The purpose of this chapter is:

(1) to protect the safety and welfare of Texas schoolchildren and school personnel;

(2) to ensure educators and applicants are morally fit and worthy to instruct or to supervise the youth of the state;

(3) to regulate and to enforce the standards of conduct of educators and applicants;

(4) to provide for disciplinary proceedings in conformity with the Texas Government Code, Chapter 2001, and the rules of practice and procedure of the State Office of Administrative Hearings;

(5) to enforce an educators' code of ethics;

(6) to fairly and efficiently resolve disciplinary proceedings at the least expense possible to the parties and the state;

(7) to promote the development of legal precedents through State Board for Educator Certification (SBEC) decisions to the end that disciplinary proceedings may be justly resolved; and

(8) to provide for regulation and general administration pursuant to the SBEC's enabling statutes.

(b) Policy governing disciplinary proceedings [~~Governing Disciplinary Proceedings~~].

(1) A certified educator holds a unique position of public trust with almost unparalleled access to the hearts and minds of impressionable students. The conduct of an educator must be held to the highest standard. Because SBEC sanctions are imposed for reasons of public policy, and are not penal in nature, criminal procedural and punishment standards are not appropriate to educator disciplinary proceedings.

(2) The following general principles shall apply.

(A) Because the SBEC's primary duty is to safeguard the interests of Texas students, educator certification must be considered a privilege and not a right.

(B) The SBEC may pursue disciplinary proceedings and sanctions based on convictions of felonies and misdemeanors as provided by the Texas Education Code (TEC), §21.060; the Texas Occupations Code, Chapter 53; and this chapter.

(C) The SBEC may also pursue disciplinary proceedings and sanctions based on educator conduct that is proved by a preponderance of the evidence, and such proceedings and sanctions do not require a criminal conviction, deferred adjudication, community supervision, an indictment, or an arrest.

(D) An educator's good moral character, as defined in §249.3 of this title (relating to Definitions), constitutes the essence of the role model that the educator represents to students both inside and outside the classroom. Chapter 247 of this title (relating to Educators' Code of Ethics) and this chapter provide for educator disciplinary proceedings and provide a minimum standard for educator conduct. Conduct or conditions that may demonstrate that an educator or applicant lacks good moral character, is a negative role model to students, and does not possess the moral fitness necessary to be a certified educator include, but are not limited to:

(i) active community supervision or criminal probation;

(ii) conduct that indicates dishonesty or untruthfulness;

(iii) habitual impairment through drugs or alcohol;

(iv) abuse or neglect of students and minors, including the educator's own children; and

(v) reckless endangerment of the safety of others.

(E) "Unworthy to instruct or to supervise the youth of this state," defined in §249.3 of this title, which serves as a basis for sanctions under §249.15(b)(2) of this title (relating to Disciplinary Action by State Board for Educator Certification), is a broad concept that is not limited to the specific criminal convictions that are described in the TEC, §21.058 and §21.060. The moral fitness of a person to instruct the youth of this state must be determined from an examination of all relevant conduct, is not limited to conduct that occurs while performing the duties of a professional educator, and is not limited to conduct that constitutes a criminal violation or results in a criminal conviction or to conduct that constitutes a violation of Chapter 247 of this title.

(F) Educators have positions of authority, have extensive access to students when no other adults (or even other students, in some cases) are present, and have access to confidential information that could provide a unique opportunity to exploit student vulnerabilities. Educators must clearly understand the boundaries of the educator-student relationship that they are trusted not to cross. Any violation of that trust, such as soliciting or engaging in a romantic or sexual relationship with any student or minor, is considered conduct that may result in permanent revocation of an educator's certificate.

(G) Administrators who hold Superintendent, Principal, or Mid-Management Administrator certificates issued by the SBEC have, as a result of their actual or potential positions of authority over both students and other educators, an even greater obligation to maintain good moral character than teachers and paraprofessionals. When an administrator's conduct demonstrates that the administrator lacks good moral character, is a negative role model to students, or does not possess the moral fitness necessary to be a certified educator as described in subparagraph (D) of this paragraph, the administrator may be subject to greater sanction than a teacher or paraprofessional would receive for the same conduct.

(H) [~~(G)~~] Evidence of rehabilitation with regard to educator conduct that could result in sanction, denial of a certification application, or denial of an application for reinstatement of a certificate shall be recognized and considered. In addition, the following shall also be considered:

(i) the nature and seriousness of prior conduct;

(ii) the potential danger the conduct poses to the health and welfare of students;

(iii) the effect of the prior conduct upon any victims of the conduct;

(iv) whether sufficient time has passed and sufficient evidence is presented to demonstrate that the educator or applicant has been rehabilitated from the prior conduct; and

(v) the effect of the conduct upon the educator's good moral character and ability to be a proper role model for students.

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
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State Board for Educator Certification
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SUBCHAPTER B. ENFORCEMENT ACTIONS AND GUIDELINES

19 TAC §249.15, §249.17

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.006(c), as amended by House Bill (HB) 1783, 84th Texas Legislature, Regular Session, 2015, and (g), which require the State Board for Educator Certification (SBEC) to propose rules that require the reporting of educator misconduct; §21.007, which requires the SBEC to propose rules that provide for a procedure for placing a notice of investigation of certain alleged misconduct on an educator's public certification records; §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.035, as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, which allows the SBEC to delegate authority to the Commissioner of Education or Texas Education Agency (TEA) staff to settle contested cases involving educator certification and directs the TEA to provide the administrative functions and services of the SBEC; §21.040(6), which allows the SBEC authority to develop and implement policies that define responsibilities of the SBEC; §21.040(7), which requires the SBEC to execute contracts as necessary for the performance of its administrative functions; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by the Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.044(a), which authorizes the SBEC to propose rules establishing the training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program and specify the minimum academic qualifications required for a certificate; §21.058, which provides for the revocation of educator certificates based on conviction of certain offenses; §21.060, which allows the SBEC to suspend or revoke educator certificates based on conviction for certain offenses related to the duties and responsibilities of the education profession; §21.105(c), which allows the SBEC to impose contract abandonment sanctions against a teacher employed under a probationary contract; §21.160(c), which allows the SBEC to impose contract abandonment sanctions against a teacher employed under a continuing contract; §21.210(c), which allows the SBEC to impose contract abandonment sanctions against a teacher employed under a term contract; §22.082, which states that the SBEC shall subscribe to the criminal history clearinghouse as provided by the Texas Government Code, §411.0845, and may obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under the TEC, Chapter 21, Subchapter B; §22.0831, which requires the SBEC to conduct a national criminal history record information review of all applicants for or holders of educator certificates who are employed in Texas schools; §22.085, which allows the SBEC to impose a sanction on an educator who does not discharge an employee or refuse to hire an applicant if the educator knows or should have known, through a criminal history record information review, that the employee or applicant has been convicted of a criminal offense, and requires that school district superintendents and chief operating officers of open-enrollment charter schools certify to the commissioner that the district or school has not failed to discharge or refused to hire any individuals with criminal history; §22.087, as amended by HB 1783, 84th Texas Legislature, Regular Session, 2015, which requires superintendents to notify the SBEC whenever they obtain knowledge that an applicant for or holder of an educator certificate has a reported criminal history; and §57.491(g), which requires the SBEC to not renew a certificate due to loan default on a guaranteed student loan; the Texas Government Code, §411.087, as amended by Senate Bill (SB) 1902, 84th Texas Legislature, Regular Session, 2015, which authorizes the SBEC to receive criminal history record information from the Federal Bureau of Investigation; §411.090, which allows the SBEC to obtain criminal history record information from the Department of Public Safety of the State of Texas; and §2001.058(e), which allows the SBEC to vacate or modify an order issued by an administrative law judge, or change a finding of fact or conclusion of law made by an administrative law judge, only when the SBEC determines that the administrative law judge did not properly apply or interpret law, rules, written policies or a prior administrative decision; that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or made a technical error in a finding of fact; the Texas Family Code, §261.308(d), which, under certain circumstances, requires the Texas Department of Family and Protective Services (DFPS) to provide information to the SBEC regarding a person alleged to have committed child abuse or neglect; §261.308(e), which requires DFPS to release information that the SBEC has a reasonable basis for believing is necessary to assist the SBEC in protecting children from a person alleged to have committed abuse or neglect; §261.406(a), which requires the DFPS to investigate reports of possible abuse of a child in a public school; and §261.406(b), as amended by SB 206, 84th Texas Legislature, Regular Session, 2015, which requires the DFPS to send a written report to the SBEC on investigations in schools for appropriate action; and the Texas Occupations Code, §53.021(a), as amended by HB 2299, 84th Texas Legislature, Regular Session, 2015, effective January 1, 2017, which provides that a licensing agency may suspend, revoke, or deny a license to a person convicted of an offense related to

the duties and responsibilities of the education profession and certain other offenses; §53.022, which provides the factors to be considered by the SBEC in determining whether a criminal conviction relates to the duties and responsibilities of the education profession; §53.023, which provides additional factors to be considered by the SBEC in determining the fitness of a person convicted of a crime to hold an educator certificate; §53.024, which provides that licensing proceedings brought pursuant to Chapter 53 are governed by the Administrative Procedure Act; §53.025, which requires the SBEC to issue guidelines providing the reasons for determinations made by the SBEC pursuant to Chapter 53; §53.051, which requires the SBEC to notify a person in writing of the reasons for a denial, suspension, or revocation of a certificate because of a prior conviction of a crime and the procedures for appeal of that decision; and §53.052, which allows a person who has exhausted administrative remedies to file an action for judicial review within 30 days after the SBEC decision becomes final and appealable.

CROSS REFERENCE TO STATUTE. The proposed amendments implement the TEC, §§21.006(c), as amended by HB 1783, 84th Texas Legislature, Regular Session, 2015, and (g); 21.007; 21.031(a); 21.035, as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015; 21.040(6) and (7); 21.041(a) and (b)(1), (4), (7), and (8); 21.044(a); 21.058; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; 22.0831; 22.085; 22.087, as amended by HB 1783, 84th Texas Legislature, Regular Session, 2015; and 57.491(g); the Texas Government Code, §§411.087, as amended by SB 1902, 84th Texas Legislature, Regular Session, 2015; 411.090; and 2001.058(e); the Texas Family Code, §261.308(d) and (e) and §261.406(a) and (b), as amended by SB 206, 84th Texas Legislature, Regular Session, 2015; and the Texas Occupations Code, §§53.021(a), as amended by HB 2299, 84th Texas Legislature, Regular Session, 2015, effective January 1, 2017; 53.022-53.025; 53.051; and 53.052.

§249.15. Disciplinary Action by State Board for Educator Certification.

(a) Pursuant to this chapter, the State Board for Educator Certification (SBEC) may take any of the following actions:

(1) place restrictions on the issuance, renewal, or holding of a certificate, either indefinitely or for a set term;

(2) issue an inscribed or non-inscribed reprimand;

(3) suspend a certificate for a set term or issue a probated suspension for a set term;

(4) revoke or cancel, which includes accepting the surrender of, a certificate without opportunity for reapplication for a set term or permanently; or

(5) impose any additional conditions or restrictions upon a certificate that the SBEC deems necessary to facilitate the rehabilitation and professional development of the educator or to protect students, parents of students, school personnel, or school officials.

(b) The SBEC may take any of the actions listed in subsection (a) of this section based on satisfactory evidence that:

(1) the person has conducted school or education activities in violation of law;

(2) the person is unworthy to instruct or to supervise the youth of this state;

(3) the person has violated a provision of the Educators' Code of Ethics;

(4) the person has failed to report or has hindered the reporting of child abuse pursuant to the Texas Family Code, §261.001, or has failed to notify the SBEC under the circumstances and in the manner required by the Texas Education Code (TEC), §21.006, and §249.14(d) and (e) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition);

(5) the person has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c);

(6) the person has failed to cooperate with the Texas Education Agency (TEA) in an investigation;

(7) the person has failed to provide information required to be provided by §229.3 of this title (relating to Required Submissions of Information, Surveys, and Other Data);

(8) the person has violated the security or integrity of any assessment required by the TEC, Chapter 39, Subchapter B, as described in subsection (g) of this section or has committed an act that is a departure from the test administration procedures established by the commissioner of education in Chapter 101 of this title (relating to Assessment);

(9) the person has committed an act described in §249.14(h)(1) of this title, which constitutes sanctionable Priority 1 conduct, as follows:

(A) any conduct constituting a felony criminal offense;

(B) indecent exposure;

(C) public lewdness;

(D) child abuse and/or neglect;

(E) possession of a weapon on school property;

(F) drug offenses occurring on school property;

(G) sale to or making alcohol or other drugs available to a student or minor;

(H) sale, distribution, or display of harmful material to a student or minor;

(I) certificate fraud;

(J) state assessment testing violations;

(K) deadly conduct; or

(L) conduct that involves soliciting or engaging in sexual conduct or a romantic relationship with a student or minor;

(10) the person has committed an act that would constitute an offense (without regard to whether there has been a criminal conviction) that is considered to relate directly to the duties and responsibilities of the education profession, as described in §249.16(c) of this title (relating to Eligibility of Persons with Criminal History for a Certificate under Texas Occupations Code, Chapter 53, and Texas Education Code, Chapter 21). Such offenses indicate a threat to the health, safety, or welfare of a student or minor, parent of a student, fellow employee, or professional colleague; interfere with the orderly, efficient, or safe operation of a school district, campus, or activity; or indicate impaired ability or misrepresentation of qualifications to perform the functions of an educator and include, but are not limited to:

(A) offenses involving moral turpitude;

(B) offenses involving any form of sexual or physical abuse or neglect of a student or minor or other illegal conduct with a student or minor;

(C) offenses involving any felony possession or conspiracy to possess, or any misdemeanor or felony transfer, sale, distribution, or conspiracy to transfer, sell, or distribute any controlled substance defined in the Texas Health and Safety Code, Chapter 481;

(D) offenses involving school property or funds;

(E) offenses involving any attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle any person to hold or obtain a position as an educator;

(F) offenses occurring wholly or in part on school property or at a school-sponsored activity; or

(G) felony offenses involving driving while intoxicated (DWI);

(11) the person has intentionally failed to comply with the reporting, notification, and confidentiality requirements specified in the Texas Code of Criminal Procedure, §15.27(a), relating to student arrests, detentions, and juvenile referrals for certain offenses;

(12) the person has failed to discharge an employee or to refuse to hire an applicant when the person knew or should have known through a criminal history record information review that the employee or applicant had been convicted of an offense in accordance with the TEC, §22.085; [~~or~~]

(13) the person is a superintendent of a school district or the chief operating officer of an open-enrollment charter school who falsely or inaccurately certified to the commissioner of education that the district or charter school had complied with the TEC, §22.085; or[~~.~~]

(14) the person has failed to comply with an order or decision of the SBEC.

(c) The TEA staff may commence a contested case to take any of the actions listed in subsection (a) of this section by serving a petition to the certificate holder in accordance with this chapter describing the SBEC's intent to issue a sanction and specifying the legal and factual reasons for the sanction. The certificate holder shall have 30 calendar days to file an answer as provided in §249.27 of this title (relating to Answer).

(d) Upon the failure of the certificate holder to file a written answer as required by this chapter, the TEA staff may file a request for the issuance of a default judgment from the SBEC imposing the proposed sanction in accordance with §249.35 of this title (relating to Disposition Prior to Hearing; Default).

(e) If the certificate holder files a timely answer as provided in this section, the case will be referred to the State Office of Administrative Hearings (SOAH) for hearing in accordance with the SOAH rules; the Texas Government Code, Chapter 2001; and this chapter.

(f) The provisions of this section are not exclusive and do not preclude consideration of other grounds or measures available by law to the SBEC or the TEA staff, including student loan default or child support arrears. The SBEC may request the Office of the Attorney General to pursue available civil, equitable, or other legal remedies to enforce an order or decision of the SBEC under this chapter.

(g) The statewide assessment program as defined by the TEC, Chapter 39, Subchapter B, is a secure testing program.

(1) Procedures for maintaining security shall be specified in the appropriate test administration materials.

(2) Secure test materials must be accounted for before, during, and after each test administration. Only authorized personnel may have access to secure test materials.

(3) The contents of each test booklet and answer document are confidential in accordance with the Texas Government Code, Chapter 551, and the Family Educational Rights and Privacy Act of 1974. Individual student performance results are confidential as specified under the TEC, §39.030(b).

(4) Violation of security or confidential integrity of any test required by the TEC, Chapter 39, Subchapter B, shall be prohibited. A person who engages in conduct prohibited by this section may be subject to sanction of credentials, including any of the sanctions provided by subsection (a) of this section.

(5) Charter school test administrators are not required to be certified; however, any irregularity in the administration of any test required by the TEC, Chapter 39, Subchapter B, would cause the charter itself to come under review by the commissioner of education for possible sanctions or revocation, as provided under the TEC, §12.115(a)(4).

(6) Conduct that violates the security and confidential integrity of a test is evidenced by any departure from the test administration procedures established by the commissioner of education. Conduct of this nature may include, but is not limited to, the following acts and omissions:

(A) viewing a test before, during, or after an assessment unless specifically authorized to do so;

(B) duplicating secure examination materials;

(C) disclosing the contents of any portion of a secure test;

(D) providing, suggesting, or indicating to an examinee a response or answer to a secure test item or prompt;

(E) changing or altering a response or answer of an examinee to a secure test item or prompt;

(F) aiding or assisting an examinee with a response or answer to a secure test item or prompt;

(G) fraudulently exempting or preventing a student from the administration of a required state assessment;

(H) encouraging or assisting an individual to engage in the conduct described in paragraphs (1)-(7) of this subsection; or

(I) failing to report to an appropriate authority that an individual has engaged in conduct outlined in paragraphs (1)-(8) of this subsection.

(7) Any irregularities in test security or confidential integrity may also result in the invalidation of student results.

(8) The superintendent and campus principal of each school district and chief administrative officer of each charter school and any private school administering the tests as allowed under the TEC, §39.033, shall develop procedures to ensure the security and confidential integrity of the tests specified in the TEC, Chapter 39, Subchapter B, and shall be responsible for notifying the TEA in writing of conduct that violates the security or confidential integrity of a test administered under the TEC, Chapter 39, Subchapter B. A person who fails to report such conduct as required by this subsection may be subject to any of the sanctions provided by subsection (a) of this section.

§249.17. Decision-Making Guidelines.

(a) Purpose. The purpose of these guidelines is to achieve the following objectives:

(1) to provide a framework of analysis for the Texas Education Agency (TEA) staff, the presiding administrative law judge (ALJ),

and the State Board for Educator Certification (SBEC) in considering matters under this chapter;

(2) to promote consistency in the exercise of sound discretion by the TEA staff, the presiding ALJ, and the SBEC in seeking, proposing, and making decisions under this chapter; and

(3) to provide guidance for the informal resolution of potentially contested matters.

(b) Construction and application. This section shall be construed and applied so as to preserve SBEC members' discretion in making final decisions under this chapter. This section shall be further construed and applied so as to be consistent with §249.5(b) of this title (relating to Purpose; Policy Governing Disciplinary Proceedings) and this chapter, the Texas Education Code (TEC), and other applicable law, including SBEC decisions and orders.

(c) Consideration. The following factors may be considered in seeking, proposing, or making a decision under this chapter:

(1) the seriousness of the violation;

(2) whether the misconduct was premeditated or intentional;

(3) attempted concealment of misconduct;

(4) prior misconduct and SBEC sanctions;

(5) the potential danger the conduct poses to the health and welfare of students;

(6) the effect of the prior conduct upon any victims of the conduct;

(7) whether sufficient time has passed and sufficient evidence is presented to demonstrate that the educator or applicant has been rehabilitated from the prior conduct;

(8) the effect of the conduct upon the educator's good moral character and ability to be a proper role model for students;

(9) [~~(5)~~] whether the sanction will deter future violations; and

(10) [~~(6)~~] any other relevant circumstances or facts.

(d) Contract abandonment.

(1) Good cause. The following factors may be considered good cause when an educator is reported to have abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c):

(A) serious illness or health condition of the educator or close family member of the educator;

(B) relocation to a new city as a result of change in employer of the educator's spouse or partner who resides with the educator; or

(C) significant change in the educator's family needs that requires the educator to relocate or to devote more time than allowed by current employment.

(2) Mitigating factors. The following factors may be considered in seeking, proposing, or making a decision under this chapter regarding an educator who has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c):

(A) educator gave written notice to school district two weeks or more in advance of the first day of instruction for which the educator will not be present;

(B) educator assisted school district in finding a replacement educator to fill the position;

(C) educator continued to work until the school district hired a replacement educator;

(D) educator assisted in training the replacement educator;

(E) educator showed good faith in communications and negotiations with school district; or

(F) educator provided lesson plans for classes following educator's resignation.

(3) Mandatory minimum sanction for contract abandonment. An educator subject to sanction, who has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c) in a case where the factors listed in paragraph (1) or (2) of this subsection do not apply, may not receive a sanction of less than:

(A) suspension for one year from the first day that, without district permission, the educator failed to appear for work under the contract, provided that the educator has not worked as an educator during that year and the case is resolved within that one year through an agreed final order; or

(B) suspension for one year from either the effective date of an agreed final order resolving the case or an agreed future date at the beginning of the following school year, if the educator has worked as an educator after abandoning the contract; or

(C) suspension for one year from the date that the SBEC adopts an order that becomes final following a contested case hearing at the State Office of Administrative Hearings (SOAH).

(e) Mandatory minimum sanction for felony-level conduct. An educator subject to sanction, who is court-ordered to complete a period of deferred adjudication or community supervision for a felony-level criminal offense under state or federal law, may not receive a sanction of less than:

(1) suspension for a period concurrent with the term of deferred adjudication or community supervision, if the case is resolved through an agreed final order prior to the educator completing deferred adjudication or community supervision and the educator has not been employed as an educator during the period of deferred adjudication or community supervision; or

(2) suspension beginning on the effective date of an agreed final order for a period extending beyond the end of the educator's deferred adjudication or community supervision but may be less than the initial court-ordered term of deferred adjudication or community supervision, if the case is resolved through an agreed final order prior to the educator completing deferred adjudication or community supervision and the educator has been employed as an educator during the period of deferred adjudication or community supervision; or

(3) suspension beginning on the effective date of an agreed final order for a period at least half as long as the initial court-ordered term of deferred adjudication or community supervision, if the case is resolved through an agreed final order after the educator has completed deferred adjudication or community supervision; or

(4) suspension for a period equal to the term of deferred adjudication or community supervision that the criminal court initially ordered but beginning from the date of the final board decision, if the case is resolved through a final board decision following a contested case hearing at the SOAH.

(f) Mandatory minimum sanction for misdemeanor-level conduct. If an educator is subject to sanction, and a court has ordered the educator to complete a period of deferred adjudication, community supervision, or pretrial diversion for a misdemeanor-level criminal offense under state or federal law, the educator may not receive a sanction of less than an inscribed reprimand.

(g) Mandatory minimum sanction for test security violation. An educator who intentionally manipulates the results or violates the security or confidential integrity of any test required by the TEC, Chapter 39, Subchapter B, may not receive a sanction of less than suspension for one year from the effective date of an agreed final order or a final board decision following a contested case hearing at the SOAH.

(h) [~~(d)~~] Mandatory permanent [~~Permanent~~] revocation or denial. Notwithstanding subsection (c) of this section, the SBEC shall permanently revoke the teaching certificate of any educator or permanently deny the application of any applicant if, after a contested case hearing, it is determined that the educator or applicant:

(1) engaged in any sexual contact or romantic relationship with a student or minor;

(2) solicited any sexual contact or romantic relationship with a student or minor;

(3) possessed or distributed child pornography;

(4) was registered as a sex offender;

(5) committed criminal homicide;

(6) transferred, sold, distributed, or conspired to possess, transfer, sell, or distribute any controlled substance, the possession of which would be at least a Class A misdemeanor under the Texas Health and Safety Code, Chapter 481, on school property; or

(7) committed any offense described in the TEC, §21.058.

(i) [~~(e)~~] Sanctioned misconduct in another state. The findings of fact contained in final orders from any other state jurisdiction may provide the factual basis for SBEC disciplinary action. If the underlying conduct for the administrative sanction of an educator's certificate or license issued in another state is a violation of SBEC rules, the SBEC may initiate a disciplinary action regarding the educator's Texas educator certificate and impose a sanction as provided under this chapter.

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
State Board for Educator Certification
Earliest possible date of adoption: January 31, 2016
For further information, please call: (512) 475-1497

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SUBCHAPTER D. HEARING PROCEDURES

19 TAC §249.35

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.035, as amended by House Bill (HB) 2205, 84th Texas Legislature, Regular Session, 2015, which allows the SBEC to delegate authority to the Commissioner of Education or Texas Education Agency (TEA) staff to settle contested cases involving educator certification and directs the TEA to provide the administrative functions and services of the SBEC; §21.040(6), which allows the SBEC authority to develop and implement policies that define responsibilities of the SBEC; §21.040(7), which requires the SBEC to execute contracts as necessary for the performance of its administrative functions; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by the Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; and the Texas Government Code, §2001.058(d-1), as added by HB 2154, 84th Texas Legislature, Regular Session, 2015, which allows an administrative law judge at the State Office of Administrative Hearings to dismiss a case and remand it to the referring agency if a party defaults, and allows the agency to then informally dispose of the case; and §2001.058(e), which allows the SBEC to vacate or modify an order issued by an administrative law judge, or change a finding of fact or conclusion of law made by an administrative law judge, only when the SBEC determines that the administrative law judge did not properly apply or interpret law, rules, written policies or a prior administrative decision; that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or made a technical error in a finding of fact.

CROSS REFERENCE TO STATUTE. The proposed amendment implements the TEC, §§21.031(a); 21.035, as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015; 21.040(6) and (7); and 21.041(a) and (b)(1), (4), (7), and (8); and the Texas Government Code, §2001.058(d-1), as added by HB 2154, 84th Texas Legislature, Regular Session, 2015, and (e).

§249.35. Disposition Prior to Hearing; Default.

(a) This chapter and 1 Texas Administrative Code (TAC), Part 7, Chapter 155 (relating to Rules of Procedure) shall govern disposition prior to hearing, default, and attendant relief.

(b) The Texas Education Agency (TEA) staff or the commissioner of education may issue and sign orders on behalf of the State Board for Educator Certification (SBEC) resolving a case, prior to the issuance of a proposal for decision by the presiding administrative law judge (ALJ) at the State Office of Administrative Hearings (SOAH), by waiver, stipulation, compromise, agreed settlement, consent order, agreed statement of facts, or any other informal or alternative resolution agreed to by the parties and not precluded by law.

(c) The SBEC or the SOAH [~~State Office of Administrative Hearings (SOAH)~~] may dispose of a case through dismissal, partial or final summary disposition, or any other procedure authorized by SOAH rules of procedure prior to a contested case hearing on the merits on the

following grounds: unnecessary duplication of proceedings; res judicata; withdrawal; mootness; lack of jurisdiction; failure of a party requesting relief to timely file or file in proper form a pleading that would support an order or decision in that party's favor; failure to comply with an applicable order, deadline, rule, or other requirement issued by the SBEC, the TEA staff, or the presiding ALJ [~~administrative law judge (ALJ)~~]; failure to state a claim for which relief can be granted; or failure to prosecute.

(d) In any contested case hearing conducted pursuant to this chapter, the findings made by a hearing examiner in a proceeding arising under the Texas Education Code, Chapter 21, Subchapter F, shall not be conclusive but, the record of such proceeding, including all testimony and evidence admitted in the hearing, as well as the findings of the hearing examiner, shall be deemed admissible in a proceeding brought pursuant to this chapter and shall be considered by the ALJ and the SBEC in issuing a proposed or final decision.

(e) For purposes of this chapter, the following shall constitute a default in a contested case:

(1) the failure of the respondent to timely file a written answer in proper form as required by this chapter;

(2) the failure of the petitioner in an administrative denial case to timely file a petition in proper form as required by this chapter; or

(3) the failure of the certificate holder or applicant to appear in person or by authorized representative on the day and at the time set for hearing in a contested case, regardless of whether a written answer or petition has been filed.

(f) Upon the occurrence of an event of default as defined in this section, the SBEC may enter a default judgment, as authorized by the Texas Government Code, §2001.056, and 1 TAC, Part 7, §155.501 (relating to Default Proceedings)[~~, whether or not the case has been referred to the SOAH, upon 30 calendar days' notice. It is a rebuttable presumption that the notice was served on the certificate holder or applicant no later than five calendar days after mailing. The notice shall specify the factual and legal basis for imposing the proposed sanction. Prior to issuance of a default decision or order, the certificate holder may contest the issuance of a default judgment by written notice filed with the TEA staff or by written request to appear before the SBEC at an SBEC meeting to show good cause for failure to file an answer or appear at the contested case proceeding~~].

(1) If a respondent has failed to timely file a written answer or a petitioner in an administrative denial case has failed to timely file a petition, TEA staff will provide the certificate holder or applicant with a notice of default specifying the factual and legal basis for imposing the proposed sanction at least 30 calendar days prior to presenting a motion for default to the SBEC. It is a rebuttable presumption that the notice was served on the certificate holder or applicant no later than five calendar days after mailing.

(2) If the case is dismissed and remanded to the SBEC by the SOAH after a certificate holder or applicant failed to appear in person or by authorized representative on the day and at the time set for hearing in a contested case, the TEA staff attorney shall present to the SBEC a motion for default. After consideration of the petition and the motion for default, the SBEC may then issue a default order deeming the allegations in the petition as true.

(3) Prior to issuance of a default decision or order, the certificate holder may contest the issuance of a default judgment by written notice filed with TEA staff or by written request to appear before the SBEC at an SBEC meeting to show good cause for failure to file an answer or appear at the contested case proceeding.

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
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State Board for Educator Certification
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TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §273.14

The Texas Optometry Board proposes amendments to §273.14, to comply with provisions of Senate Bills 807, 1296 and 1307, 84th Legislature, Regular Session. The amendments enlarge the eligibility for the alternate licensing procedure to include applicants currently on active duty in the military and veterans of active duty. The amendments include an exemption from the application fees for military service member, military veteran and military spouse applicants currently licensed in another state.

Chris Kloeris, executive director of the Texas Optometry Board, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for local government as a result of enforcing or administering the amendments. Using data from the Texas Workforce Investment Council and current licensee data, it is estimated that nine percent of applicants will qualify for the fee exemption in Senate Bill 807. This will be a reduction in revenue of $13,500 over the five year period.

Chris Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated is that military service members and military veterans will now have be able to use the same alternate and more timely process to obtain a license that is now available to military spouses.

It is anticipated that there will be no economic costs for these applicants, the persons required to comply with the rule.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

The agency licenses approximately 4,000 optometrists and therapeutic optometrists. A significant majority of licensees own or work in one or more of the 1,000 to 3,000 optometric practices which meet the definition of a small business. Some of these practices meet the definition of a micro business. The agency does not license these practices. There are no anticipated costs because of the amendments for those persons required to comply with the rule.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code

§2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register.*

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.152, 351.252, and 351.254, and Senate Bills 807, 1296 and 1307, 84th Legislature. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession and §351.151 as authorizing fees. The agency interprets §351.252 and §351.254 as setting the requirements for license, and Senate Bills 807, 1296 and 1307, 84th Legislature, Regular Session, as authorizing the application fee exemption and alternate licensing procedure to military service member, military veteran or military spouse applicants.

§273.14. License Applications [~~Licenses~~] for Military Service Member, Military Veteran, and Military Spouse.

(a) Definitions.

(1) "Military service member" means a person who is on active duty [~~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" means a person who is married to a military service member [~~who is currently on active duty~~].

(3) "Military veteran" means a person who has served on active duty, who was discharged or released from active duty, and who was not dishonorably discharged [~~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~~].

(4) "Active duty" means current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §437.001, Government Code, or similar military service of another state.

(5) "Armed forces of the United States" means the army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(b) License eligibility requirements for applicants with military experience.

(1) Verified military service, training, or education will be credited toward the licensing requirements, other than an examination requirement, of an applicant who is a military service member or military veteran.

(2) This subsection does not apply if the applicant holds a restricted license issued by another jurisdiction or has an unacceptable criminal history.

(c) Alternate licensing procedure authorized by Texas Occupations Code §55.004 and §55.005. [~~The Texas Occupations Code, §55.004 and §55.004, provides different methods of licensure for military spouses.~~]

(1) Applicants currently licensed in another state [~~Applications Under Texas Occupations Code §55.005, Expedited Licensing Procedure~~].

(A) Application.

(i) The military service member, military veteran or military spouse applicant must be licensed in good standing as a therapeutic optometrist or the equivalent in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Texas Optometry Act.

(ii) The military service member, military veteran or military spouse applicant shall submit a completed Military [~~Licensure without Examination~~] application, including the submission of a completed Federal Bureau of Investigation fingerprint card provided by the Board, official license verifications from each state in which the applicant is or was licensed, a certified copy of the applicant's birth certificate, a certified copy of the optometry school transcript granting the applicant a doctor of optometry degree, and proof of the applicant's status as a military service member, military veteran or military spouse.

(iii) A military service member, military veteran, or military spouse licensed in another state is exempt from the application fee in §273.4 of this title. Such an applicant is not exempt from exam fees charged for an exam administered by an organization or person other than the Board. [~~An application fee in the same amount as the application fee set out in §273.4 of this title must be submitted with the application.~~]

(iv) A license issued under this subsection shall be a license to practice therapeutic optometry with the same obligations and duties required of a licensed therapeutic optometrist and subject to the same disciplinary requirements for that license.

(B) License Renewal.

(i) A license issued under this subsection shall expire [~~on the first day of the calendar year at least~~] twelve months subsequent to the date the license is issued. If the license is timely renewed, the licensee may thereafter renew the license by paying the renewal fee not later than January 1 of each year.

(ii) Prior to renewing the license for the first time, the military service member, military veteran or military spouse licensee shall take and pass the Texas Jurisprudence Examination.

(iii) With the exception of clause (ii) of this subparagraph, the requirements for renewing the license are the same as the requirements for renewing an active license.

[~~(2) Applications Under Texas Occupations Code §55.004, Alternative Licensing Procedure.~~]

[~~(A) Requirements for license for military spouse applicant currently licensed in another state.~~]

[~~(i)~~] ~~The military spouse applicant must be licensed in good standing as a therapeutic optometrist or the equivalent in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Texas Optometry Act.~~]

[~~(ii)~~] ~~The military spouse applicant shall submit a completed Licensure without Examination application, including the submission of a completed Federal Bureau of Investigation fingerprint card provided by the Board, official license verifications from each~~

~~state in which the applicant is or was licensed,~~ ~~a certified copy of the applicant's birth certificate,~~ ~~a certified copy of the optometry school transcript granting the applicant a doctor of optometry degree,~~ ~~and proof of the applicant's status as a military spouse.]~~

~~*[(iii)* An application fee in the same amount as the application fee set out in §273.4 of this title must be submitted with the application.]~~

~~*[(iv)* Within six months of receiving a license under this subsection, the military spouse licensee shall take and pass the Texas Jurisprudence Examination.]~~

(2) [~~(B)~~] Requirements for license for military service member, military veteran or military spouse applicant not currently licensed to practice optometry who was licensed in Texas within five years of the application submission.

(A) Application.

~~*[(i)* The military spouse applicant's Texas license must have expired while the applicant lived in another state for at least six months.]~~

(i) [~~(ii)~~] The military service member, military veteran or military spouse applicant shall submit a completed Military [~~Licensure without Examination~~] application, including the submission of a completed Federal Bureau of Investigation fingerprint card provided by the Board, official license verifications from each state in which the applicant is or was licensed, a certified copy of the applicant's birth certificate, a certified copy of the optometry school transcript granting the applicant a doctor of optometry degree, and proof of the applicant's status as a military service member, military veteran or military spouse.

(ii) [~~(iii)~~] An application fee in the same amount as the application fee set out in §273.4 of this title must be submitted with the application.

(iii) A license issued under this subsection shall be a license to practice therapeutic optometry with the same obligations and duties required of a licensed therapeutic optometrist and subject to the same disciplinary requirements for that license.

~~*[(iv)* Within six months of receiving a license under this subsection, the military spouse licensee shall take and pass the Texas Jurisprudence Examination.]~~

~~*[(v)* The Board may allow a military spouse applicant under this subparagraph to demonstrate competency by alternative methods which may include any combination of the following as determined by the Board: education, continuing education, examinations (written and/or practical), work experience or other methods required by the Executive Director.]~~

(B) License Renewal

(i) A license issued under this subsection shall expire twelve months subsequent to the date the license is issued. If the license is timely renewed, the licensee may thereafter renew the license by paying the renewal fee not later than January 1 of each year.

(ii) Prior to renewing the license for the first time, the military service member, military veteran or military spouse licensee shall take and pass the Texas Jurisprudence Examination.

(iii) With the exception of clause (ii) of this subparagraph, the requirements for renewing the license are the same as the requirements for renewing an active license.

~~[(C) A license issued under this subsection shall be a license to practice therapeutic optometry with the same obligations and duties required of a licensed therapeutic optometrist and subject to the same disciplinary requirements for that license. The license expires on January 1, following the date a license is issued.]~~

~~[(D) Renewal of license. The requirements for renewing the license are the same as the requirements for renewing an active license.]~~

(d) Alternative method to demonstrate competency. To protect the health and safety of the citizens of this state, a license to practice optometry requires the licensee to obtain a doctorate degree in optometry and passing scores on lengthy and complex nationally accepted examinations. An alternative method to demonstrate competency is not available at this time.

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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Chris Kloeris
Executive Director
Texas Optometry Board
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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 21. RIGHT OF WAY

The Texas Department of Transportation (department) proposes amendments to §21.31, §21.33, and §21.41, and new §21.57, concerning Utility Accommodation, and amendments to §21.962 and §21.963, concerning Leasing of Right of Way to Saltwater Pipeline Operators.

EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTION

House Bill 497, 84th Legislature, Regular Session, 2015, amended §91.901, Natural Resources Code, to expand the definition of "saltwater pipeline facility" to include saltwater intended to be used in drilling or operating an oil or gas well. The goal of HB 497 is to facilitate the use of state right of way and the construction of saltwater pipelines as a mechanism of transporting saltwater needed for exploration and production to and from drill sites, to disposal and other types of wells. Those statutory changes necessitate changes to 43 TAC Chapter 21, Subchapters C and R.

Amendments to §21.31, Definitions, modify the definition of "saltwater" to include water intended to be used in the exploration of oil or gas. The amendments also add the definition of "temporary pipeline facility."

Amendments to §21.33, Applicability, clarify that a temporary saltwater pipeline facility is exempt from conformance with the provisions for high-pressure pipelines.

Amendments to §21.41, Overhead Electric and Communication Lines, repeal existing Figure §21.41(c): Horizontal Clearances, and substitutes a new Horizontal Clearances table, which updates the existing table to reflect current standards used for the state highway system's right of ways.

New §21.57, Temporary Saltwater Pipeline, authorizes the installation of a temporary saltwater pipeline on highway right of way for a term not to exceed 180 days. The section limits the size of the pipe to 12 inches or less and operation pressure to 60 pounds per inch or less.

Amendments to §21.962, Definitions, modify and expand the definition for "saltwater pipeline facility" to include facilities that conduct saltwater intended to be used in the exploration for or production of oil or gas.

Amendments to §21.963, Lease of Right of Way for a Saltwater Pipeline Facility, add that the lease term for above-ground saltwater facilities may not exceed 180 days.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years in which the amendments and new section as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments and new section.

Mr. Gus Cannon, Interim Director, Right of Way Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and new section.

PUBLIC BENEFIT AND COST

Mr. Cannon has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and new section will be reduced highway congestion and improved air quality resulting from the alternative method of transporting saltwater. There are no anticipated economic costs for persons required to comply with the sections as proposed. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §21.31, §21.33 §21.41, and §§21.962 - 21.963, and new §21.57, may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to *RuleComments@txdot.gov* with the subject line "Chapter 21 Rules." The deadline for receipt of comments is 5:00 p.m. on February 1, 2016. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

SUBCHAPTER C. UTILITY ACCOMMODATION

43 TAC §§21.31, 21.33, 21.41, 21.57

STATUTORY AUTHORITY

The amendments and new section are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §202.052 and §202.053, which authorize the department to lease a highway right of way and Natural Resources Code, §91.902, which authorizes the Texas Transportation Commission to adopt rules to implement Natural Resources Code, Chapter 91, Subchapter T.

CROSS REFERENCE TO STATUTE

Natural Resources Code, Chapter 91, Subchapter T and Transportation Code, Chapter 202, Subchapter C.

§21.31. Definitions.

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

(1) AASHTO--American Association of State Highway and Transportation Officials.

(2) Abandoned utility--A utility facility that no longer carries a product or performs a function and for which the owner:

(A) does not plan to use in future operations; or

(B) is unknown or cannot be located.

(3) Access denial line--A line concurrent with the common property line across which access to the highway facility from the adjoining property is not permitted.

(4) As-Built plans--Drawings showing the actual locations of installed or relocated utility facilities.

(5) Border width--The area between the edge of pavement structure or back of curb to the right of way line.

(6) Bridge abutment joint--The joint between the approach slab and bridge structure.

(7) Center median--The area between opposite directions of travel on a divided highway.

(8) Certified as-installed construction plans--The construction plans for the installation of a utility facility, accompanied by an affidavit certifying that the facility was installed in accordance with the plans.

(9) Commission--The Texas Transportation Commission.

(10) Common carrier--As defined in the Natural Resources Code, §111.002.

(11) Conduit--A pipe or other opening, buried or above ground, for conveying fluids or gases, or serving as an envelope containing pipelines, cables, or other utility facilities.

(12) Controlled access highway--A highway so designated by the commission on which owners or occupants of abutting lands and other persons are denied access to or from the highway mainlanes.

(13) Department--The Texas Department of Transportation.

(14) Depth of cover--The minimum depth as measured from the top of the utility line to the ground line or top of pavement.

(15) Design vehicle load (HS-20)--A design load designation used for bridge design analysis representing a three-axle truck loaded with four tons on the front axle and 16 tons on each of the other two axles. The HS-20 designation is one of many established by AASHTO for use in the structural design and analysis of bridges.

(16) Director--The chief administrative officer in charge of either the Maintenance Division or the Right of Way Division, or a successor division of either the Maintenance Division or the Right of Way Division.

(17) Distribution line--That part of a utility system connecting a transmission line to a service line.

(18) District--One of the 25 geographical districts into which the department is divided.

(19) District engineer--The chief administrative officer in charge of a district, or his or her designee.

(20) Duct--A pipe or other opening, buried or above ground, containing multiple conduits.

(21) Engineer--A person licensed to practice engineering in the state of Texas.

(22) Engineering study--An appropriate level of analysis as determined by the department, which may include a traffic impact analysis, that determines the expected impact that permitting access will have on mobility, safety, and the efficient operation of the state highway system.

(23) Executive director--The chief administrative officer of the department, or that officer's designee not below the level of assistant executive director.

(24) Freeway--A divided highway with frontage roads or full control of access.

(25) Frontage road--A street or road auxiliary to, and located alongside, a controlled access highway or freeway that separates local traffic from high-speed through traffic and provides service to abutting property.

(26) Gathering line--A line that delivers a raw utility product from various sites to a central distribution or feed line for the purposes of refining, collecting, or storing the product.

(27) Hazardous material--Any gas, material, substance, or waste that, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local authority to pose a present or potential hazard to human health or safety or to the environment. The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (49 CFR §172.101), and materials that meet the defining criteria for hazard classes and divisions in 49 CFR Part 173 (49 CFR §171.8).

(28) High-pressure pipeline--A pipeline that is operated, or may reasonably be expected to operate in the future, at a pressure of over 60 pounds per square inch.

(29) Horizontal clearance--The areas of highway roadsides designed, constructed, and maintained to increase safety, improve traffic operation, and enhance the appearance of highways.

(30) Idled facility--A utility conduit or line which temporarily does not carry a product, or does not perform a function and whose owner has not provided a date for its return to operation.

(31) Inclement weather--Weather conditions that are hazardous to the safety of the traveling public, highway or utility workers, or the preservation of the highway.

(32) Joint use agreement--A use and occupancy agreement that describes the obligations, responsibilities, rights, and privileges vested in the department and retained by the utility, and used for situations in which the utility has a compensable interest in the land occupied by its facilities and the land is to be jointly occupied and used for highway and utility purposes.

(33) Low-pressure pipeline--A pipeline that is operated at a pressure not exceeding 60 pounds per square inch.

(34) Mainlanes--The traveled way of a freeway or controlled access highway that carries through traffic.

(35) Maintenance Division--The administrative office of the department responsible for the maintenance and operation of the state highway system.

(36) Noncontrolled access highway--A highway on which owners or occupants of abutting lands or other persons have direct access to or from the mainlanes by department permit.

(37) Outer separation--The area between the mainlanes of a highway for through traffic and a frontage road.

(38) Pavement structure--The combination of the surface, base course, and subbase.

(39) Private utility--A person, firm, corporation, or other entity engaged in a utility business other than a public utility or saltwater pipeline operator. The term includes an individual who owns a service line.

(40) Public utility--A person, firm, corporation, river authority, municipality, or other political subdivision that is engaged in the business of transporting or distributing a utility product that directly or indirectly serves the public and that is authorized by state law to operate, construct, and maintain its facilities over, under, across, on, or along highways. The term includes a common carrier and a gas corporation. This term does not include a saltwater pipeline operator whose only right to occupy state right of way is by a lease under Natural Resources Code, §91.902.

(41) Ramp terminus--The entrance or exit portion of a controlled access highway ramp adjacent to the through traveled lanes.

(42) Right of Way Division (ROW)--The administrative office of the department responsible for the acquisition and management of the state right of way.

(43) Riprap--An appurtenance placed on the exposed surfaces of soils to prevent erosion, including a cast-in-place layer of concrete or stones placed together.

(44) Saltwater--Water that contains [~~containing~~] salt and other substances and that is intended to be used in the exploration for oil or gas or that is produced during the drilling or operation of an oil, gas, or other type of well.

(45) Saltwater pipeline--A pipeline that carries saltwater. The term includes a pipeline that carries water and water based solutions from an oil or gas well on which hydraulic fracturing treatment has been performed to a waste disposal well.

(46) Saltwater pipeline operator--A person, firm, corporation or other entity that owns, installs, manages, operates, leases, or controls a saltwater pipeline that is not a public utility.

(47) Service line--A utility facility that conveys electricity, gas, water, or telecommunication services from a main or conduit located in the right of way to a meter or other measuring device that services a customer or to the outside wall of a structure, whichever is applicable and nearer the right of way.

(48) Temporary Saltwater Pipeline--An above-ground saltwater pipeline that satisfies the requirements of §21.57 of this subchapter.

(49) [~~(48)~~] TMUTCD--The most recent edition of Texas Manual on Uniform Traffic Control Devices for Streets and Highways.

(50) [~~(49)~~] Traffic impact analysis--A traffic engineering study that determines the potential current and future traffic impacts of a proposed traffic generator and that is signed, sealed, and dated by an engineer licensed to practice in the state of Texas.

(51) [~~(50)~~] Transmission line--That part of a utility system connecting a main energy or material source with a distribution system.

(52) [~~(51)~~] Use and occupancy agreement--The written document, whether in the form of an agreement, acknowledgment, notice, or request, by which the department approves the use and occupancy of highway right of way by utility facilities.

(53) [~~(52)~~] Utility--Any entity owning a utility facility.

(54) [~~(53)~~] Utility appurtenances--Any attachments or integral parts of a utility facility, including fire hydrants, valves, communication controller boxes and pedestals, electric boxes, and gas regulators.

(55) [~~(54)~~] Utility facilities--All utility lines, pipelines, saltwater pipelines, conduits, cables, and their appurtenances within the highway right of way except those for highway-oriented needs, including underground, surface, or overhead facilities either singularly or in combination, which may be transmission, distribution, service, or gathering lines.

(56) [~~(55)~~] Utility product--The product, such as water, saltwater, steam, electricity, gas, oil, or crude resources or communications, cable television, or waste disposal services, carried by the utility facility.

(57) [~~(56)~~] Utility strip--The area of land established within a control of access highway, located longitudinally within the area between the outer traveled way and the right of way line, for the nonexclusive use, occupancy, and access by one or more authorized utilities.

(58) [~~(57)~~] Utility structure--A pole, bridge, tower, or other aboveground structure on which a conduit, line, pipeline, or other utility facility is attached.

§21.33. Applicability.

(a) For highways under department jurisdiction, the provisions of this subchapter concerning utility accommodation apply to:

(1) new utility facility installations;

(2) additions to or maintenance of existing utility facility installations;

(3) adjustments or relocations of utility facilities; and

(4) existing utility facilities retained within the right of way.

(b) The provisions of this subchapter concerning utility accommodation do not apply to utility facilities located within the rights of way of completed highways for which agreements with the department were entered into before the effective date of this subchapter.

(c) This subchapter applies to utility facilities not specifically mentioned in accordance with the nature of the utility facility. All pipelines carrying corrosive, caustic, flammable, explosive, or otherwise hazardous materials and saltwater pipelines, other than a temporary saltwater pipeline approved under §21.57 of this subchapter, shall conform to the provisions for high-pressure pipelines.

(d) The district engineer may prescribe special district supplemental accommodation requirements on a specific installation or adjustment based on the specific soil, terrain, climate, vegetation, traffic characteristics, type of utility facility, or other factors unique to the area. If the district supplemental accommodation requirements are more strict than the minimum requirements of this subchapter, the supplemental accommodation requirements must be detailed in writing.

§21.41. Overhead Electric and Communication Lines.

(a) Type of construction. Longitudinal lines on the right of way shall be limited to single pole construction. Where an existing or proposed utility is supported by "H" frames, the same type structures may be utilized for the crossing provided all other requirements of this subchapter are met.

(b) Vertical clearance. The minimum vertical clearance above the highway shall be 22 feet for electric lines, and 18 feet for communication and cable television lines. These clearances may be greater, as required by the National Electric Safety Code and governing laws.

(c) Horizontal clearances. The following table indicates the design values for horizontal clearances:
Figure: 43 TAC §21.41(c)

(d) Location.

(1) Poles supporting longitudinal lines shall be located within three feet of the right of way line, except that, at the option of the department, this distance may be varied at short breaks in the right of way line. Poles with bases greater than 36 inches in diameter shall not be placed within the right of way. Guy wires placed within the right of way shall be held to a minimum and be in line with the pole line. Other locations may be allowed, but in no case shall the guy wires or poles be located closer than the minimum allowed by the department's horizontal clearance policy, as shown in subsection (c) of this section.

(2) Poles shall not be placed in the center median of any highway. At the department's discretion, poles may be placed in the outer separations or more than three feet inside the right of way where the right of way is greater than 300 feet and where poles can be located in accordance with the department's horizontal clearance policy, as shown in subsection (c) of this section.

(3) Overhead electric, communication, and cable television line crossings at bridges or grade separation structures are prohibited. Overhead lines shall not be located below any bridge structure. If rerouting the line completely around the structure and approaches is not feasible, a minimum horizontal distance of 150 feet from the bridge abutment joint and a minimum vertical clearance of 30 feet above the point of crossing the bridge pavement and retaining walls is required to ensure adequate safety for construction and maintenance operations.

(e) Markers. Utility poles must bear readily identifiable plaques or other approved markers denoting ownership and use, at a distance of approximately one pole per 1,320 feet, as equally spaced as practicable, and at every crossing, in a format acceptable to the department. Each company connecting to a pole shall appropriately identify its use of the pole. There shall be a beginning and end marker for each user of the pole line.

§21.57. Temporary Saltwater Pipeline.

(a) A temporary saltwater pipeline may be installed on highway right of way pursuant to a lease from the department. Before a temporary saltwater pipeline may be installed, the installation must be approved by the department.

(b) The outer diameter of a pipe used for a temporary saltwater pipeline may not to exceed 12 inches.

(c) A temporary saltwater pipeline may not operate at a pressure of over 60 pounds per inch.

(d) A temporary saltwater pipeline may not be in place on highway right of way for a period that exceeds 180 days.

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 December 17, 2015.

TRD-201505715
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: January 31, 2016
For further information, please call: (512) 463-8630

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SUBCHAPTER R. LEASING OF RIGHT OF WAY TO SALTWATER PIPELINE OPERATORS

43 TAC §21.962, §21.963

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §202.052 and §202.053, which authorize the department to lease a highway right of way and Natural Resources Code, §91.902, which authorizes the Texas Transportation Commission to adopt rules to implement Natural Resources Code, Chapter 91, Subchapter T.

CROSS REFERENCE TO STATUTE

Natural Resources Code, Chapter 91, Subchapter T and Transportation Code, Chapter 202, Subchapter C.

§21.962. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) Commission--The Texas Transportation Commission.

(2) Department--The Texas Department of Transportation.

(3) Director--The director of the right of way division of the department or the director's designee.

(4) District--One of the 25 geographical district offices of the department.

(5) District administrator--The chief executive officer in charge of a District.

(6) Executive director--The executive director of the department or the executive director's designee not below the level of deputy executive director.

(7) Premises--The area within a right of way being leased by a saltwater pipeline operator for the installation, operation and maintenance of a saltwater pipeline facility.

(8) Right of way--An interest in real property that is held or controlled by the department for a highway purpose.

(9) Saltwater pipeline facility--A pipeline facility that conducts water that contains [~~containing~~] salt and other substances and that is intended to be used in drilling or operating a well used in the exploration for or production of oil or gas, including an injection well used for enhanced recovery operations, or that is produced during drilling or operating an oil, gas, or other type of well. The term includes a pipeline facility that conducts flowback and produced water from an oil or gas well on which a hydraulic fracturing treatment has been performed to an oil and gas waste disposal well for disposal.

(10) Saltwater pipeline operator--A person, who owns, installs, manages, operates, leases, or controls a saltwater pipeline facility.

§21.963. Lease of Right of Way for a Saltwater Pipeline Facility.

(a) The director may execute the lease of the premises for the installation, operation, and maintenance of a saltwater pipeline facility if the director finds that:

(1) there is sufficient area within the right of way to accommodate the saltwater pipeline facility;

(2) the area proposed as the premises will not be needed for highway purposes during the term of the lease; and

(3) the lessee's use of the right of way will be consistent with safety, maintenance, operation, and beautification of the state highway system.

(b) The lessee is required to pay to the department an amount determined by the department that is not less than fair market value for the lease of the premises. The department may consider its costs of administering the lease in establishing the amount charged.

(c) Except as provided by subsection (d) of this section, the [~~The~~] term of the lease may not exceed 10 years, unless the lease contains a cancellation clause by which the department, in its sole discretion, may terminate the lease after 10 years with not more than 12 months' notice.

(d) The term of a lease for the installation of an above-ground saltwater pipeline facility may not exceed 180 days.

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 December 17, 2015.

TRD-201505716
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: January 31, 2016
For further information, please call: (512) 463-8630

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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 8. TEXAS RACING COMMISSION

CHAPTER 301. DEFINITIONS

16 TAC §301.1

The Texas Racing Commission withdraws the proposed amendments to §301.1 which appeared in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4128).

Filed with the Office of the Secretary of State on December 17, 2015.

TRD-201505726
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: December 17, 2015
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 withdraws the proposed amendments to §303.31 and §303.42 which appeared in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4130).

Filed with the Office of the Secretary of State on December 17, 2015.

TRD-201505727
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: December 17, 2015
For further information, please call: (512) 833-6699

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CHAPTER 309. RACETRACK LICENSES AND OPERATIONS
SUBCHAPTER C. HORSE RACETRACKS
DIVISION 4. OPERATIONS

16 TAC §309.297, §309.299

The Texas Racing Commission withdraws the proposed amendments to §309.297 and §309.299 which appeared in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4131).

Filed with the Office of the Secretary of State on December 17, 2015.

TRD-201505728
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: December 17, 2015
For further information, please call: (512) 833-6699

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SUBCHAPTER D. GREYHOUND RACETRACKS
DIVISION 2. OPERATIONS

16 TAC §309.361

The Texas Racing Commission withdraws the proposed amendments to §309.361 which appeared in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4131).

Filed with the Office of the Secretary of State on December 17, 2015.

TRD-201505729
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: December 17, 2015
For further information, please call: (512) 833-6699

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CHAPTER 321. PARI-MUTUEL WAGERING
SUBCHAPTER A. MUTUEL OPERATIONS
DIVISION 1. GENERAL PROVISIONS

16 TAC §§321.5, 321.12, 321.13

The Texas Racing Commission withdraws the proposed amendments to §§321.5, 321.12, and 321.13 which appeared in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4138).

Filed with the Office of the Secretary of State on December 17, 2015.

TRD-201505730

Mark Fenner
General Counsel
Texas Racing Commission
Effective date: December 17, 2015
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 Texas Racing Commission withdraws the proposed amendments to §§321.23, 321.25 and 321.27 which appeared in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4138).

Filed with the Office of the Secretary of State on December 18, 2015.

TRD-201505731
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: December 18, 2015
For further information, please call: (512) 833-6699

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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 Texas Racing Commission withdraws the proposed repeal of §§321.701, 321.703, 321.705, 321.707, 321.709, 321.711, 321.713, 321.715, 321.717, and 321.719 which appeared in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4140).

Filed with the Office of the Secretary of State on December 18, 2015.

TRD-201505732
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: December 18, 2015
For further information, please call: (512) 833-6699

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TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER B. SUPERVISION OF PERSONNEL

22 TAC §573.11

Proposed amended §573.11, published in the June 12, 2015, issue of the *Texas Register* (40 TexReg 3614), 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 December 18, 2015.

TRD-201505838

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ADOPTED RULES

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

TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 4. CREDIT CARD SURCHARGE APPEAL PROCEDURES

SUBCHAPTER A. CONTESTED CASE PROCEDURE FOR VIOLATIONS ON OR BEFORE AUGUST 31, 2013

7 TAC §4.105

The Finance Commission of Texas (commission) adopts amendments to Title 7 of the Texas Administrative Code, §4.105, concerning the rules applicable to a contested case hearing on a credit card surcharge violation occurring on or before August 31, 2013.

The commission adopts the amendments without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7517). The rules will not be republished.

The commission received no written comments on the proposal.

In general, the purpose of these amendments is to clarify which rules of procedure are applicable to a contested case hearing for persons regulated by the Office of Consumer Credit Commissioner.

The commission has previously adopted rules of procedure applicable to a contested case hearing conducted by an administrative law judge employed by or contracted by a finance agency. *See,* 7 TAC §9.1. The Office of Consumer Credit Commissioner (OCCC) has recently contracted with the State Office of Administrative Hearings (SOAH) to conduct contested case hearings. SOAH applies its own procedural rules to all matters referred to SOAH, unless otherwise required by statute or rule. 1 TAC §155.1(a).

Concurrent with these adopted rule amendments, the commission is adopting amendments to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions; former title: Definitions and Interpretation; Severability) to clarify which rules of procedure apply to a contested case hearing conducted by an administrative law judge contracted by a finance agency, and which rules apply to a hearing conducted by SOAH. Amended subsection (a) in §9.1 as adopted will read: "This chapter governs contested case hearings conducted by an administrative law judge employed or contracted by an agency. All contested case hearings conducted by the State Office of Administrative Hearings (SOAH) are governed by SOAH's procedural rules found at Title 1, Chapter 155 of the Texas Administrative Code."

Title 7, Part 1 (relating to the Finance Commission of Texas), contains one reference to the Chapter 9 rules of procedure concerning credit card surcharge violations regulated by the OCCC under Chapter 4. Section 4.105(b) identifies the rules of procedure applicable to a contested case hearing regarding a credit card surcharge violation occurring on or before August 31, 2013. The adopted amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

The amendments are adopted under Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The amendments are further adopted under the authority of Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code; Texas Finance Code, §11.306, which authorizes the commission to adopt residential mortgage loan origination rules as provided by Chapter 156; Texas Finance Code, §180.004, which authorizes the commission to adopt rules to enforce Chapter 180; and Texas Finance Code, §393.622, which authorizes the commission to adopt rules to enforce Chapter 393.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14, 156, 180, 339, 393, and Title 4.

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 December 18, 2015.

TRD-201505791
Leslie L. Pettijohn
Consumer Credit Commissioner
Finance Commission of Texas
Effective date: January 7, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7621

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CHAPTER 9. RULES OF PROCEDURE FOR CONTESTED CASE HEARINGS, APPEALS, AND RULEMAKINGS

The Finance Commission of Texas (commission) adopts amendments to 7 TAC Chapter 9, concerning Rules of Procedure for

Contested Case Hearings, Appeals, and Rulemakings. Specifically, the amendments are adopted in §9.1, concerning Application, Construction, and Definitions (former title: Definitions and Interpretation; Severability); and in §9.12, concerning Default in a contested case subject to the rules under Chapter 9, Subchapter B.

The commission adopts the amendments without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7518).

The commission received no written comments on the proposal.

In general, the purpose of the amendments is to update and clarify certain contested case procedural rules applicable to the finance agencies (Texas Department of Banking, Texas Department of Savings and Mortgage Lending, and Office of Consumer Credit Commissioner).

Regarding §9.1, the purpose of the amendments is to clarify the rules applicable to different forums in which contested cases may be heard for individuals and entities regulated by the finance agencies.

Regarding §9.12, the purpose of the amendments is to clarify that the finance agencies may informally dispose of contested cases by default, as authorized by §2001.056 of the Texas Government Code.

The following background information relates to the adopted amendments in §9.1, regarding contested case forums.

Some of the finance agencies have contracted with a licensed attorney to serve as an administrative law judge and conduct contested case hearings. This administrative law judge used by the Texas Department of Savings and Mortgage Lending (SML) and by the Office of Consumer Credit Commissioner (OCCC) elected to not renew the contract for the 2016 fiscal year. In order to provide an appropriate, timely, and transparent forum to persons subject to SML and OCCC regulation, these two finance agencies entered into contracts with the State Office of Administrative Hearings (SOAH) to conduct contested case hearings.

In contrast, the Texas Department of Banking has contracted with another administrative law judge for this fiscal year. At present, contested cases for the Texas Department of Banking will continue to be governed by the rules contained in 7 TAC Chapter 9.

With regard to the SML and the OCCC, the law requires that SOAH's rules of procedure control a contested case conducted by SOAH. In order to clarify the application of procedural rules in various forums, the adopted amendments have been made for persons regulated by the SML and the OCCC whose cases may be heard by SOAH.

Additionally, should any of the finance agencies have the need to utilize a different contested case forum in the future, the amendments will provide the flexibility for contested cases to be heard by either a contracted administrative law judge or by SOAH.

The adopted amendments to §9.1 add new subsection (a), which states that the rules provided in Chapter 9 govern contested case hearings conducted by an administrative law judge employed or contracted by one of the finance agencies. The amendments to §9.1 further explain that contested case hearings conducted by SOAH are governed by SOAH's procedural rules.

The amendments also revise the title of the rule to provide a more appropriate description of the amended content of the rule. The new title of "Application, Construction, and Definitions" has replaced the former title of §9.1, "Definitions and Interpretation; Severability." In addition, the existing subsections have been relettered accordingly.

The following background information relates to the adopted amendments in §9.12, concerning Default in a contested case subject to the rules under Chapter 9, Subchapter B.

A contested case is a formal proceeding to determine the legal rights, duties, or privileges of licensees and applicants after an opportunity for an adjudicative hearing. The proceeding is governed by formal rules of procedure, which allow an agency to dispose of a case by default.

The finance agencies expend considerable resources preparing for and conducting contested case hearings where the respondent fails to appear at the hearing, or withdraws its request shortly before the hearing date. These costs are ultimately passed on to licensees and applicants in the form of higher license and renewal fees.

During the last session, the Texas Legislature expressed further support for disposing of cases by default according to the individual agency's rules. Therefore, the amendments to §9.12 further the Legislature's directive to conserve state resources where a party does not intend to proceed with a hearing.

The adopted amendments to §9.12 clarify the finance agencies' authority to informally dispose of a contested case by default. The amendments add a single sentence to the end of the existing rule. The additional sentence states that a finance agency may, as an alternative to conducting a hearing when a party fails to appear, informally dispose of the matter as permitted by §2001.056 of the Texas Government Code, without the necessity of a hearing. This amendment is consistent with §2001.056(4) of the Texas Government Code, as well as the Finance Commission's existing default procedures found within the current language of §9.12 (deeming the defaulting party to have waived the right to contest the evidence, cross-examine the witnesses, and present an affirmative case or defense), and the default procedures of the State Office of Administrative Hearings found at 1 Texas Administrative Code §155.501.

SUBCHAPTER A. GENERAL

7 TAC §9.1

The amendments are adopted under Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The amendments are also adopted under specific rulemaking authority in the substantive statutes administered by the agencies. Texas Finance Code, §11.301 and §31.003(a)(5) authorize the finance commission to adopt rules necessary or reasonable to facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission. Texas Finance Code, §151.102(a)(1) authorizes the finance commission to adopt rules necessary to implement and clarify Chapter 151. Texas Finance Code, §154.051(b) authorizes the department of banking to adopt rules concerning matters incidental to the enforcement and orderly administration of Chapter 154.

Texas Finance Code, §11.302 authorizes the finance commission to adopt rules applicable to state savings associations or to savings banks. Texas Finance Code, §96.002(a)(2) authorize the savings and mortgage lending commissioner and the finance

commission to adopt procedural rules for deciding applications filed with the savings and mortgage lending commissioner or the department of savings and mortgage lending.

Texas Finance Code, §11.304 authorizes the finance commission to adopt rules necessary for supervising the consumer credit commissioner and for ensuring compliance with Texas Finance Code, Chapter 14 and Title 4. Texas Finance Code, §371.006 authorizes the consumer credit commissioner to adopt rules necessary for the enforcement of Texas Finance Code, Chapter 371. Texas Finance Code, §11.306 authorizes the commission to adopt residential mortgage loan origination rules as provided by Chapter 156. Texas Finance Code, §180.004 authorizes the commission to adopt rules to enforce Chapter 180. Texas Finance Code, §393.622 authorizes the commission to adopt rules to enforce Chapter 393.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14, 154, 156, 157, 180, 339, 393, 394, and Title 4, and Texas Occupations Code, Chapter 1956.

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 December 18, 2015.

TRD-201505786
Charles Cooper
Executive Director
Finance Commission of Texas
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Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7621

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SUBCHAPTER B. CONTESTED CASE HEARINGS

7 TAC §9.12

The amendments are adopted under Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The amendments are also adopted under specific rulemaking authority in the substantive statutes administered by the agencies. Texas Finance Code, §11.301 and §31.003(a)(5) authorize the finance commission to adopt rules necessary or reasonable to facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission. Texas Finance Code, §151.102(a)(1) authorizes the finance commission to adopt rules necessary to implement and clarify Chapter 151. Texas Finance Code, §154.051(b) authorizes the department of banking to adopt rules concerning matters incidental to the enforcement and orderly administration of Chapter 154.

Texas Finance Code, §11.302 authorizes the finance commission to adopt rules applicable to state savings associations or to savings banks. Texas Finance Code, §96.002(a)(2) authorize the savings and mortgage lending commissioner and the finance commission to adopt procedural rules for deciding applications filed with the savings and mortgage lending commissioner or the department of savings and mortgage lending.

Texas Finance Code, §11.304 authorizes the finance commission to adopt rules necessary for supervising the consumer credit commissioner and for ensuring compliance with Texas Finance Code, Chapter 14 and Title 4. Texas Finance Code, §371.006 authorizes the consumer credit commissioner to adopt rules necessary for the enforcement of Texas Finance Code, Chapter 371. Texas Finance Code, §11.306 authorizes the commission to adopt residential mortgage loan origination rules as provided by Chapter 156. Texas Finance Code, §180.004 authorizes the commission to adopt rules to enforce Chapter 180. Texas Finance Code, §393.622 authorizes the commission to adopt rules to enforce Chapter 393.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14, 154, 156, 157, 180, 339, 393, 394, and Title 4, and Texas Occupations Code, Chapter 1956.

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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Charles Cooper
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Finance Commission of Texas
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PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 17. TRUST COMPANY REGULATION

SUBCHAPTER B. EXAMINATION AND CALL REPORTS

7 TAC §17.23

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §17.23, concerning trust company call reports, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7520). The amended rule will not be republished.

Finance Code, §181.107(c) and §182.013(a), were amended effective September 1, 2015, by Sections 3 and 7 of S.B. 875 (Acts 2015, 84th Leg., R.S., Ch. 250, §3 and §7), which make confidential the statement of condition and income (call report) of an exempt trust company, and require the trust company's annual certification that it is maintaining the conditions and limitations of its exemption to be submitted with the company's call report. The statutory amendments further make clear that these provisions apply to all exempt trust companies, whether exempt under Finance Code §182.011 or §182.019.

The amendment to §17.23(b)(2) revises the due date for an exempt trust company to file its call report to April 30 of each year. An exempt trust company will now file its call report simultaneously with its annual certification of exempt status, as required by Finance Code §182.013(a).

Amended 17.23(f) addresses the confidentiality of call reports.

Finally, conforming changes were made in §17.23(g)(2).

The Department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §181.003, which authorizes the commission to adopt rules to implement and clarify applicable law, and pursuant to Finance Code §181.107(b)(1), which empowers the commission to adopt rules requiring trust companies to file their statements of condition and income with the banking commissioner at specified intervals.

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 December 18, 2015.

TRD-201505782
Catherine Reyer
General Counsel
Texas Department of Banking
Effective date: January 7, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 475-1301

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CHAPTER 21. TRUST COMPANY CORPORATE ACTIVITIES

SUBCHAPTER B. TRUST COMPANY CHARTERING AND POWERS

7 TAC §21.24

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §21.24, concerning exemptions for family trust companies, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7521), and will not be republished.

Finance Code §182.011 and §182.012 were amended effective September 1, 2015, by Sections 5 and 6 of S.B. 875 (Acts 2015, 84th Leg., R.S., Ch. 250, §5 - §6), to materially revise the requirements for exemption as a family trust company. In general, prior to September 1, 2015, a trust company could obtain an exemption from certain otherwise applicable requirements if it restricted its client services to individuals related within the fourth degree of affinity or consanguinity to an individual who controls the trust company, and to certain of their related interests. Effective September 1, 2015, the exemption is available to a trust company that serves only individuals related within the seventh degree to a shared common ancestor and their related interests, provided the trust company is wholly owned by family members, see Finance Code §182.011(a).

Section 21.24 specifies the information that must be contained in an application for exemption as a family trust company, and further specifies the specific provisions of the Trust Company Act (Finance Code, Title 3, Subtitle F), from which a trust company may request an exemption, subject to conditions or limitations imposed by the banking commissioner. The amendments to Subsection (a) clarify the definition of "family member" by eliminating ambiguities in Finance Code, §182.011(a - 1)(2), and define the term "key employee" as required by Finance Code, §182.011(a - 1)(1)(C).

New §21.24(f) establishes one year as a reasonable transition period for terminating services to a former key employee or to a formerly revocable trust that is no longer an eligible family client. The banking commissioner is empowered to grant an extension of up to one year based on a finding that additional time is needed for the trust company to appropriately discharge its fiduciary duty to affected beneficiaries, notwithstanding its demonstrated good faith efforts to terminate the ineligible relationship.

New §21.24(g) extends the revised statutory exemption scheme to a family trust company that was granted exempt status prior to September 1, 2015. However, the control person named in its certificate of formation is deemed to be the shared common ancestor for purposes of determining family client eligibility under Finance Code, §182.011, unless the trust company amends its certificate of formation to name a new shared common ancestor.

Finally, amendments to §21.24 that are not discussed in this preamble are nonsubstantive and adopted solely to conform the text to new law and to the other amendments to §21.24.

The Department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §181.003, which grants the commission authority to adopt rules to implement and clarify applicable law, and Finance Code §182.011(e)(2) - (4), which grants the commission authority to adopt rules (1) specifying the provisions of Finance Code, Title 3, Subtitle F that are subject to an exemption request, (2) establishing procedures and requirements for obtaining, maintaining, or revoking an exemption, and (3) defining or further defining terms used in Finance Code §182.011.

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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Catherine Reyer
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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

The Finance Commission of Texas (commission) adopts amendments to the following sections of Title 7 of the Texas Administrative Code: §83.307, concerning the rules applicable to a regulated lender license application denial hearing; and §83.3007, concerning the rules applicable to a credit access business license application denial hearing.

The commission adopts the amendments without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7523). The rules will not be republished.

The commission received no written comments on the proposal.

In general, the purpose of these amendments is to clarify which rules of procedure are applicable to a contested case hearing for persons regulated by the Office of Consumer Credit Commissioner.

The commission has previously adopted rules of procedure applicable to a contested case hearing conducted by an administrative law judge employed by or contracted by a finance agency. *See,* 7 TAC §9.1. The Office of Consumer Credit Commissioner (OCCC) has recently contracted with the State Office of Administrative Hearings (SOAH) to conduct contested case hearings. SOAH applies its own procedural rules to all matters referred to SOAH, unless otherwise required by statute or rule. 1 TAC §155.1(a).

Concurrent with these adopted rule amendments, the commission is adopting amendments to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions; former title: Definitions and Interpretation; Severability) to clarify which rules of procedure apply to a contested case hearing conducted by an administrative law judge contracted by a finance agency, and which rules apply to a hearing conducted by SOAH. Amended subsection (a) in §9.1 as adopted will read: "This chapter governs contested case hearings conducted by an administrative law judge employed or contracted by an agency. All contested case hearings conducted by the State Office of Administrative Hearings (SOAH) are governed by SOAH's procedural rules found at Title 1, Chapter 155 of the Texas Administrative Code."

Title 7, Part 5 (relating to the OCCC), contains eight references to the Chapter 9 rules of procedure. The adopted amendments replace these references with references to the rules of procedure made applicable by the amendment to §9.1(a) of Title 7, described earlier. Accordingly, the amendments will clarify that Chapter 9 rules of procedure apply to a contested case hearing conducted by an administrative law judge contracted by a finance agency, and SOAH rules of procedure apply to a hearing conducted by SOAH.

Section 83.307(d) identifies the rules of procedure applicable to a regulated lender license application denial hearing. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section 83.3007(d) identifies the rules of procedure applicable to a credit access business license application denial hearing. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

SUBCHAPTER A. RULES FOR REGULATED LENDERS
DIVISION 3. APPLICATION PROCEDURES

7 TAC §83.307

The amendments are adopted under Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The amendments are further adopted under the authority of Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code; Texas Finance Code, §11.306, which authorizes the commission to adopt residential mortgage loan origination rules as provided by Chapter 156; Texas Finance Code, §180.004, which authorizes the commission to adopt rules to enforce Chapter 180; and Texas Finance Code, §393.622, which authorizes the commission to adopt rules to enforce Chapter 393.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14, 156, 180, 339, 393, and Title 4.

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 December 18, 2015.

TRD-201505795
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7621

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SUBCHAPTER B. RULES FOR CREDIT ACCESS BUSINESSES
DIVISION 3. APPLICATION PROCEDURES

7 TAC §83.3007

The amendments are adopted under Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The amendments are further adopted under the authority of Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code; Texas Finance Code, §11.306, which authorizes the commission to adopt residential mortgage loan origination rules as provided by Chapter 156; Texas Finance Code, §180.004, which authorizes the commission to adopt rules to enforce Chapter 180; and Texas Finance Code, §393.622, which authorizes the commission to adopt rules to enforce Chapter 393.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14, 156, 180, 339, 393, and Title 4.

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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Leslie L. Pettijohn
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Office of Consumer Credit Commissioner
Effective date: January 7, 2016
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For further information, please call: (512) 936-7621

SUBCHAPTER B. RULES FOR CREDIT ACCESS BUSINESSES

The Finance Commission of Texas (commission) adopts amendments to §§83.1002, 83.3001, 83.3002, 83.3006, 83.3010, 83.4002; and adopts new §83.4003 (repeal and replace), §83.5003, and §83.5004, in 7 TAC Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses. In addition, the commission adopts the repeal of §83.3012, §83.4003 (repeal and replace), and §83.4004.

The commission adopts the amendments to §§83.3001, 83.3002, 83.3006, 83.3010, and adopts new §83.4003 without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7525). The rules will not be republished.

The commission adopts the amendments to §83.1002 and §83.4002, and adopts new §83.5003 and §83.5004 with changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7525). These changes are being made in order to incorporate suggested comments, as discussed in the following paragraph.

The commission received four written comments on the proposal from the following organizations: the Consumer Service Alliance of Texas; Southwestern & Pacific Specialty Finance, Inc. d/b/a Check 'n Go; Texas Appleseed; and a comment jointly submitted by: Texas Catholic Conference, Texas Appleseed, Christian Life Commission, RAISE Texas, AARP Texas, Texas NAACP, Helping Hands of Belton, and the Center for Public Policy Priorities. The comments included recommendations relating to definitions, recordkeeping (including a delayed implementation date for new records), and separation between credit access businesses and third-party lenders. One comment was generally supportive of the rules. The commission's response to the four official comments is included after the purpose discussions following each respective rule receiving comments.

In general, the purpose of the adoption regarding these rules for credit access businesses is to implement changes resulting from the commission's review of Chapter 83, Subchapter B under Texas Government Code, §2001.039.

The adopted amendments include clarifying changes regarding definitions, license applications, and fees. New sections outline examination authority and recordkeeping requirements, including a list of documents that credit access businesses are required to maintain.

Section 83.4003 has been repealed and replaced with a reorganized rule regarding the review of criminal history. The content of former §83.4004 has been incorporated into new §83.4003. Section 83.3012 concerning provisional licenses has been repealed, as this rule is no longer necessary.

This is the first of two anticipated rule actions for credit access businesses. The agency is concurrently presenting the second action for proposal in this issue of the *Texas Register,* which includes rule amendments on the following issues: (1) consumer disclosures, (2) reporting requirements, and (3) license transfers.

The notice of intention to review 7 TAC Chapter 83, Subchapter B was published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6165). The commission received no comments in response to that notice.

The individual purposes of the adopted amendments, new rules, and repeals are outlined in the paragraphs to follow.

Section 83.1002 provides general definitions to be used throughout the chapter. The amendments to this section contain definitions for the terms "multiple payment auto title loan," "multiple payment payday loan," "single payment auto title loan," and "single payment payday loan." The agency intends to apply these definitions for purposes of the requirements for recordkeeping (new §83.5004), data reporting (current §83.5001), and disclosures (current §§83.6001 through 83.6008). Two commenters provided recommendations regarding these definitions. One commenter stated: "The definitions should describe the type of credit product, not the mechanism by which a CAB is compensated.... In subsections (7) and (8), we recommend inserting 'any' between 'including' and 'fees' in the following phrase: 'fees required under the terms of the transaction, including any fees required to be paid to a credit access business'." In response to this comment, paragraphs (7) and (8) include the word "any" after "including." The commission believes that it is appropriate for the definitions to provide that a product is a multiple-payment product if the consumer pays the fee to the credit access business in multiple payments. The consumer enters two separate agreements in connection with a Chapter 393 transaction: an agreement with the credit access business and an agreement with the third-party lender. The disclosure and reporting requirements encompass fees paid in connection with both of these transactions. It would be incorrect to describe a transaction where the consumer must make multiple payments to the credit access business as a "single payment" transaction. The other commenter recommended that the definitions use the word "installment" instead of "multiple payment," because the commenter believed that this would be more consistent with the definition of "deferred presentment transaction" in Texas Finance Code, §393.221(2), which provides that the definition "does not preclude repayment in more than one installment." However, the agency has consistently used the phrases "multiple payment" and "multi-payment" in the rule for consumer disclosures at §83.6007 and the accompanying figures. The commission believes that the phrase "multiple payment" is appropriate for the definitions.

An amendment to §83.3001(2)(A) revises the definition of "principal party" for sole proprietorships. The amendment removes the statement that proprietors include spouses with a community property interest. In addition, an amendment to §83.3002(1)(A)(iv)(I) removes the requirement to disclose community property interests and documentation regarding separate property status, and replaces it with a requirement

to disclose the names of the spouses of principal parties if requested. The agency currently spends considerable time requesting information from license applicants to determine the status of spouses' property interests, and explaining these concepts to applicants. These amendments will help streamline the licensing process. One commenter expressed concern about these two amendments, stating that they "could enable individuals to cloak shared ownership of a credit access business and a third-party lender." The commission believes that the existing requirement for applicants to disclose the names and addresses of third-party lenders under §83.3002(2)(E), together with the amended rule's requirement at §83.3002(1)(A)(iv)(I) to disclose information about spouses upon request, should be sufficient to address this issue. For this reason, the commission maintains the amendments for this adoption.

Adopted amendments to §83.3006 clarify the circumstances in which a licensee must notify the OCCC of changes to information in the original license application. The amendments specify that the requirement to provide updated information within 10 days applies before a license application is approved. New §83.3006(b) provides that a licensee must notify the OCCC within 30 days of knowledge of the information if the information relates to the names of principal parties or third-party lenders, criminal history, regulatory actions, or court judgments. New §83.3006(c) specifies that each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, and that it is a best practice for licensees to regularly review contact information.

An amendment to §83.3010(c) provides that a license applicant must pay a fee to a party designated by the Texas Department of Public Safety (DPS) for processing fingerprints, replacing a statement that the fee will be paid to the OCCC. This amendment conforms the rule to the method by which applicants currently provide fingerprint information through DPS's Fingerprint Applicant Services of Texas (FAST) program.

An amendment to §83.3010(g)(1)(B) contains a technical correction for the method of calculating the volume-based portion of the annual assessment fee. Previously, the rule provided that the volume-based fee will not exceed "$0.03 per each $1,000 advanced . . . in accordance with the most recent quarterly report filing required by Texas Finance Code, §393.627." However, the total dollar amount of extensions of consumer credit is not part of the information the OCCC currently requests on the quarterly report. Rather, this information is requested on the annual report. For this reason, the adopted amendment specifies that the fee will be based on the most recent annual report under §83.5001. This amendment is intended to provide technical clarification.

Section 83.3012 has been repealed because it is no longer necessary. The agency issued provisional licenses during 2012 (the first year in which credit access businesses were licensed), but no longer issues provisional licenses.

Adopted amendments to §83.4002 clarify the agency's procedure for providing delinquency notices to licensees that have failed to pay an annual assessment fee. The amendments specify that notice of delinquency is considered to be given when the OCCC sends the notice by mail to the address on file with the OCCC as a master file address, or by e-mail to the address on file with the OCCC (if the licensee has provided an e-mail address). The amendments replace former language stating that notice is given upon mailing in a properly addressed envelope. In response to an official comment, paragraph (2) states that it applies to a "master file e-mail address."

Adopted new §83.4003 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of a credit access business license. This section replaces former §83.4003 and §83.4004, which have been repealed. Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose. Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the licensed occupation of a credit access business. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a credit access business, including the reasons the crimes relate to the occupation, as provided by Texas Occupations Code, §53.025(a). One commenter suggested that the grounds for denial, suspension, or revocation in this subsection should be expanded, because a violation of Chapter 393 is a criminal violation under Texas Finance Code, §393.501. In particular, the commenter suggested that the subsection should include violations of Texas Finance Code, §393.201(c), which prohibits a credit access business from threatening or pursuing criminal charges against consumers in the absence of criminal conduct. The commission believes that a broader statement of directly related offenses is unnecessary, because the OCCC already has the authority to deny, suspend, or revoke a license based on violations of Chapter 393 under Texas Finance Code, §393.607 and §393.614. *See also Peek v. Kelley,* 570 S.W.2d 118, 120 (Tex. Civ. App.--Austin 1978, writ ref'd n.r.e.) (holding that a license applicant's violations of the Texas Pawnshop Act demonstrated that the applicant did not "have such character as would warrant the belief that she would operate a pawn business lawfully and fairly within the purposes of the Act"). In addition, new §83.4003(f) allows the OCCC to deny, suspend, or revoke based on any grounds authorized by statute. For these reasons, the commission declines to adopt the suggested change.

Subsection (c)(2) of new §83.4003 contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a licensee, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or licensee unfit, as provided by Texas Occupations Code, §53.023. Subsection (d) describes the OCCC's authority to deny a license application if it does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §393.607(a). Subsection (e) explains that the OCCC will revoke a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b). Subsection (f) identifies other grounds for denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

Adopted new §83.5003 describes the OCCC's examination authority for credit access businesses. This section implements Texas Finance Code, §393.622(a)(3), which allows the commission to "adopt rules with respect to periodic examination" of credit access businesses by the agency, as well as Texas

Finance Code, §393.622(b), which authorizes the commission to "adopt rules...to allow the commissioner to review, as part of a periodic examination, any relevant contracts between the credit access business and the third-party lender organizations with which the credit access business contracts to provide services." Subsection (a) provides that the OCCC may periodically examine each place of business of a licensee. Subsection (b) requires licensees to allow the OCCC to access their offices and make copies of records. Since the proposal, a technical correction has been made in subsections (a) and (b) to replace "investigate" with "inspect" and "investigated" with "inspected." Subsection (c) provides that the OCCC's examination authority includes the authority to examine third-party lender agreements. Subsections (d) and (e) allow the OCCC to take witness and records statements during an examination, and specifies the requirements of these statements. Unlike the other chapters of the Texas Finance Code that provide examination authority to the OCCC, Chapter 393 does not include express authority to take oaths. For this reason, under subsections (d) and (e), the OCCC may obtain unsworn statements, rather than sworn affidavits. The rule requires an acknowledgment that the statements could be used in an enforcement action in which the licensee is a party.

One commenter requested clarification regarding these amendments, stating: "We seek clarification in the commentary to the final rule that both of the proposed [sic] subsections are permissive, and refusal to give a statement to confer with management and/or counsel will not be deemed a violation of the proposed rule." Regarding records statements, licensees are required to provide the OCCC with access to their files and records, and licensees may not use the failure to provide a records statement as a way of impeding the OCCC's access to records. Regarding witness statements, the OCCC allows licensees to confer with management or counsel before providing a statement. Furthermore, the OCCC has always permitted a person signing a statement to review the statement with management or counsel before signing it. However, licensees should not use this process as a method of impeding an examination, and all witness statements should be provided by a person with personal knowledge of transactions.

Adopted new §83.5004 describes the recordkeeping requirements for credit access businesses. Paragraph (1) requires a transaction register showing the transaction number, the date of the transaction, the last name of the consumer, the total fees payable to the licensee, the total of payments, and the type of transaction. Paragraph (2) outlines the information that must be included in the record of an individual consumer's account. Paragraph (2)(A) identifies the records that must be kept for every transaction, including required disclosures and any agreements with the consumer. In particular, paragraph (2)(A)(viii) requires the transaction file to include complete documentation of any ancillary products (including insurance or an automobile club) offered to the consumer or purchased by the consumer in connection with the transaction. Regarding this provision, one commenter suggested that the rule include two additional requirements: "1. In the event of an automobile club sale, files should include documentation that the automobile club was sold in compliance with the Texas Finance Code, which permits the product only when it is sold directly by the lender (Tx. Fin. Code §303.203). 2. In the event of any insurance sale, documentation that appropriate licenses were obtained in accordance with the Texas Finance Code and the Texas Insurance Code." Credit access businesses are responsible for ensuring that providers of ancillary products are authorized to do business in Texas and that the products are offered in compliance with applicable laws. However, the commission believes that it is unnecessary for the rule to require additional documentation regarding the provider's authorization to do business. In examinations, the OCCC generally verifies that the providers of any ancillary products are authorized to do business in Texas. This information is usually available on the website of the state agency that regulates the relevant product. For this reason, the commission declines to adopt the suggested change.

Paragraph (2)(B) of new §83.5004 identifies additional records for transactions that the licensee services or collects, including account histories, documentation of repossessed collateral, litigation records, and records of criminal charges. In particular, paragraph (2)(B)(i)(X) requires the licensee to maintain records of refunds of unearned charges for loans that are prepaid in full. Since the proposal, the phrase "or other amounts" has been added to this provision after "interest charges," in order to clarify that the provision applies to refunds for unearned amounts other than interest charges (e.g., refunds for ancillary products such as credit life insurance). Paragraph (2)(B)(iv)(I) requires the licensee to maintain a vehicle condition report if a report was prepared by the licensee, the licensee's agent, or an independent contractor hired to perform the repossession. One commenter objected to this requirement, stating: "Vehicle condition reports are not a requirement under the Texas Business and Commerce Code. CABs should not be required to maintain copies of reports if they are prepared by third parties." The commenter is correct that vehicle condition reports are not required under Chapter 9 of the Texas Business and Commerce Code. However, the rule requires a licensee to maintain the report only if a report is prepared. The commission believes that this is an appropriate requirement to evidence the fact that any disposition was conducted in a commercially reasonable manner, as required by Texas Business and Commerce Code, §9.607(c) and §9.610. For this reason, the commission declines to adopt the suggested change.

Paragraph (2)(B)(iv)(III)(-f-) of new §83.5004 requires the licensee to maintain an explanation of the calculation of surplus or deficiency. Since the proposal, a technical change has been made to specify that this requirement applies if the explanation is required by Texas Business and Commerce Code, §9.616.

Paragraph (2)(C) of new §83.5004 specifies the time period for maintaining the information in the individual consumer's file, which generally must be kept for four years from the date of the transaction, or two years from the date of the final entry made on the consumer's account, whichever is later. This provision is intended to ensure that the licensee keeps transaction records at least until the time specified in applicable statutes of limitations, including the four-year limitations period in Texas Finance Code, §393.505.

Paragraph (3) of new §83.5004 requires a licensee to maintain agreements between the licensee and third-party lenders. Since the proposal, this provision has been amended to specify that the documentation must show the licensee's compliance with Texas Finance Code, §393.001(3). Paragraph (4) requires a licensee to maintain the required in-store fee schedule and notices. Paragraph (5) requires a licensee to maintain online disclosures and copies of web pages used to access online disclosures. Paragraph (6) requires a licensee to maintain advertisements. Paragraph (7) requires a licensee to maintain credit applications and adverse action records for the time period specified in Regula-

tion B, 12 C.F.R. §1002.12(b). Paragraph (8) requires a licensee to maintain an index of transfers, assignments, and sales. Paragraph (9) requires a licensee to maintain an index of litigation, criminal charges, and repossessions. Paragraph (10) requires a licensee to maintain records of its registration and surety bond as a credit services organization. Paragraph (11) requires a licensee to maintain an official correspondence file for communications with the OCCC. Paragraph (12) requires a licensee to maintain general business records showing its compliance with applicable laws.

As proposed, the rule action included new §83.5005, which described the requirements for separation between credit access businesses and third-party lenders. The proposed rule was based on Texas Finance Code, §393.001(3), which provides that a credit services organization's services include obtaining for a consumer or assisting a consumer in obtaining an extension of consumer credit "by others." The proposed rule described the general separation requirement for credit access businesses and third-party lenders, explained that the relationship must be consistent with special agency, and prohibited a credit access business from sharing its fee with a third-party lender.

The agency received three official comments regarding the separation requirements in §83.5005. The first commenter recommended that the rule include the following statement: "A licensee may not require the use of specific underwriting criteria by a lender when determining whether to make a loan to a consumer, but a licensee may apply its own underwriting criteria or criteria selected by the third-party lender." The second commenter recommended that the rule further clarify the separation requirement. This commenter recommended that the rule include the following language: "There should be no common ownership, no common directors, no common officers or employees, nor any common ownership, officers, directors or employees with a first degree family relationship." This commenter also recommended that the rule include "in the definition of common ownership, a provision that extends to ownership by family members, such as parents, spouse, siblings, spouses of siblings, children, and other close family relationships."

The third commenter provided a study titled "Pulling Back the Curtain: Shining a Light on Payday and Auto Title Loan Businesses in Texas." The study describes data collected by a public interest law organization regarding relationships between credit access businesses and third-party lenders. The study concludes that the data shows "limited competition" and "overlapping ownership among CABs and third-party lenders." Based on these conclusions, the study includes the following policy recommendation: "Establish clear and enforceable standards to ensure that CSOs do not evade the requirement that they arrange credit 'by others.' Standards should prohibit any overlap in ownership, officers, or employees between CABs and third-party lenders that service them, including family relationships among the different owners, as well as business partnerships where the same group of individuals own CABs and third-party lenders, evading the spirit of the law."

Proposed new §83.5005 has not been included in this rule adoption. The agency understands that stakeholders have concerns about separation between credit access businesses and third-party lenders, and would like to further study the issue before moving forward with a rule containing guidelines for separation. In the meantime, the agency intends to continue addressing violations of the statutory separation requirement through its authority to enforce Chapter 393.

Regarding adopted new §83.5004, the agency received three official written comments regarding the delayed implementation date. The first commenter requested that "any delayed implementation date for generating new records under this section be kept to an absolute minimum." The second commenter suggested that a delayed implementation of "at least 6 months" due to necessary software adjustments and employee training. The third commenter recommended "a nine month implementation period...to allow CABs to reprogram IT systems and reorganize hard copy records."

As a result of the comments received, the agency believes it appropriate to divide the required records into two categories, one for immediate compliance, and the second with delayed implementation. First, certain records required by §83.5004 should already be maintained by licensees. The first category of records must be kept in accordance with the new rule as of the effective date, which is anticipated to be January 7, 2016. The records in the first category are: the consumer's transaction file described by paragraph (2); the agreements between the licensee and third-party lenders described by paragraph (3); the in-store fee schedule and notices described by paragraph (4); the website and online disclosures described by paragraph (5); the advertisements described by paragraph (6); the adverse action records described by paragraph (7); the registration and surety bond records described by paragraph (10); the official correspondence file described by paragraph (11); and the general business records described by paragraph (12).

Second, certain records required by §83.5004 may need to be created by licensees. This second category of records will have a delayed compliance date of October 1, 2016. The records in the second category are: the transaction register described by paragraph (1); the index of transfers, assignments, and sales described by paragraph (8); and the index of litigation, criminal charges, and repossessions described by paragraph (9).

Regarding the second category, the agency encourages early compliance, so that licensees begin keeping these records as soon as possible. Additionally, if a particular licensee currently creates any records in the second category, the licensee should maintain those records as of the effective date. For example, if a licensee presently has an index of litigation, the licensee should maintain that litigation index in accordance with the rule beginning on the anticipated effective date of January 7, 2016.

In sum, records in the first category must be maintained beginning on the anticipated effective date of January 7, 2016. Records in the second category must be maintained beginning October 1, 2016.

DIVISION 1. GENERAL PROVISIONS

7 TAC §83.1002

These rule changes are adopted under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G. In addition, new §83.5003 and §83.5004 are adopted under Texas Finance Code, §393.622(a)(3), which authorizes the commission to adopt rules regarding periodic examinations of credit access businesses by the OCCC, and under Texas Finance Code, §393.622(b), which authorizes the commission to adopt rules regarding the review of third-party lender agreements.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

§83.1002. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 393 have the same meanings as defined in Chapter 393. The following words and terms, when used in this chapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) Commissioner--The Consumer Credit Commissioner of the State of Texas.

(2) Interpretation letter--A formal interpretation of Texas Finance Code, Title 4 made by the commissioner and approved by the Finance Commission under Texas Finance Code, §14.108.

(3) Licensee--Any person who has been issued a credit access business license pursuant to Texas Finance Code, Chapter 393.

(4) Multiple payment auto title loan--An auto title loan that is not a single payment auto title loan.

(5) Multiple payment payday loan--A payday loan that is not a single payment payday loan.

(6) OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(7) Single payment auto title loan--An auto title loan for which the entire principal balance, interest, and all fees required under the terms of the transaction, including any fees required to be paid to a credit access business, are due in a single payment.

(8) Single payment payday loan--A payday loan for which the entire principal balance, interest, and all fees required under the terms of the transaction, including any fees required to be paid to a credit access business, are due in a single payment.

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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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7621

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DIVISION 3. APPLICATION PROCEDURES

7 TAC §§83.3001, 83.3002, 83.3006, 83.3010

These rule changes are adopted under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

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7 TAC §83.3012

This repeal is adopted under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G.

The statutory provisions affected by the adopted repeal are contained in Texas Finance Code, Chapter 393.

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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DIVISION 4. LICENSE

7 TAC §83.4002, §83.4003

These rule changes are adopted under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

§83.4002. Notice of Delinquency in Payment of Annual Assessment Fee.

For purposes of Texas Finance Code, §393.613, notice of delinquency in the payment of an annual assessment fee is given when the OCCC sends the delinquency notice:

(1) by mail to the address on file with the OCCC as a master file address; or

(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address.

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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7 TAC §83.4003, §83.4004

The repeals are adopted under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G.

The statutory provisions affected by the adopted repeals are contained in Texas Finance Code, Chapter 393.

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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DIVISION 5. OPERATIONAL REQUIREMENTS

7 TAC §83.5003, §83.5004

These rule changes are adopted under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G. In addition, new §83.5003 and §83.5004 are adopted under Texas Finance Code, §393.622(a)(3), which authorizes the commission to adopt rules regarding periodic examinations of credit access businesses by the OCCC, and under Texas Finance Code, §393.622(b), which authorizes the commission to adopt rules regarding the review of third-party lender agreements.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

§83.5003. Examinations.

(a) Examination authority. The OCCC may periodically examine each place of business of a licensee and inspect the licensee's transactions and records, including books, accounts, papers, and correspondence, to the extent the transactions and records pertain to business regulated under Texas Finance Code, Chapter 393.

(b) Access to records. A licensee must allow the OCCC to examine the licensee's place of business and make a copy of an item that may be inspected under subsection (a) of this section.

(c) Third-party lender agreements. The OCCC's examination authority includes the authority to review all agreements between a licensee and any third-party lender with which the licensee contracts to provide services under Texas Finance Code, Chapter 393.

(d) Witness statements. In connection with an examination, the OCCC may obtain witness statements that pertain to business regulated under Texas Finance Code, Chapter 393. A witness statement must be signed and dated, and must include an acknowledgment that the statement may be introduced in an enforcement action in which the licensee is a party.

(e) Records statements. In connection with an examination, the OCCC may obtain statements regarding records maintained by the licensee that pertain to business regulated under Texas Finance Code, Chapter 393. A records statement must be signed and dated by a witness, and must include acknowledgments of the following:

(1) a statement of the witness's position and duties at the licensee;

(2) a statement that the witness is familiar with the manner in which records are created and maintained by virtue of duties and responsibilities;

(3) the number of pages of attached records;

(4) a statement that the records are original records or exact duplicates of the original records;

(5) a statement that the records were made at or near the time of each act, event, condition, opinion, or diagnosis set forth;

(6) a statement the records were made by, or from information transmitted by, persons with knowledge of the matters set forth;

(7) a statement that the records were kept in the course of regularly conducted business activity;

(8) a statement that it is the regular practice of the business activity to make the records; and

(9) an acknowledgment that the statement and the accompanying records may be introduced in an enforcement action in which the licensee is a party.

§83.5004. Files and Records Required.

A licensee must maintain records for each transaction under Texas Finance Code, Chapter 393, and make those records available to the OCCC for examination. The records required by this section may be maintained by using a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of these types of systems, unless otherwise specified. All records must be prepared and maintained in accordance with generally accepted accounting principles. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(1) Transaction register. A licensee must maintain a transaction register, or be able to produce this information within a reasonable amount of time. Each record in the register must contain the transaction number, the date of the transaction, the last name of the consumer, the total fees payable to the licensee, the total of payments, and the type of transaction (single payment payday loan, single payment auto title loan, multiple payment payday loan, or multiple payment auto title loan). Each record in the transaction register must be retained for four years from the date of the transaction, or two years from the date of the final entry made on the consumer's account, whichever is later.

(2) Consumer's transaction file. A licensee must maintain a paper or electronic transaction file for each individual transaction under Texas Finance Code, Chapter 393, or be able to produce this information within a reasonable amount of time. The transaction file must contain documents that show the licensee's compliance with applicable state and federal law, including Texas Finance Code, Chapter 393. If a substantially equivalent electronic record for any of the following documents exists, a paper copy of the record does not have to be included in the transaction file if the electronic record can be accessed upon request.

(A) The transaction file must include the following documentation for each transaction under Texas Finance Code, Chapter 393:

(i) any agreement between the consumer and the licensee, including the contract described by Texas Finance Code, §393.201, with all provisions required by that section, as well as the notice of cancellation described by Texas Finance Code, §393.202;

(ii) any agreement between the consumer and the lender, including the promissory note;

(iii) documentation referencing which agreements between the licensee and a third-party lender apply to the transaction, including any guarantee or letter of credit issued by the licensee;

(iv) all legally required disclosures provided in connection with the transaction, including:

(I) the consumer disclosure required by Texas Finance Code, §393.223, and §83.6007 of this title (relating to Consumer Disclosures);

(II) the credit services organization disclosure required by Texas Finance Code, §393.105;

(III) any disclosures provided under the Truth in Lending Act, 15 U.S.C. §§1601-1667f, and Regulation Z, 12 C.F.R. Part 1026;

(IV) any privacy notice provided under the Gramm-Leach-Bliley Act, 15 U.S.C. §§6801-6809, and Regulation P, 12 C.F.R. Part 1016;

(V) any notice to cosigner provided under the Federal Trade Commission's Credit Practices Rule, 16 C.F.R. §444.3;

(v) the consumer's credit application and any other written or recorded information used in evaluating the application;

(vi) any document signed by a co-borrower, co-signor, or other guarantor in connection with the transaction;

(vii) any documentation of whether the consumer is a covered borrower under the Department of Defense's Military Lending Act Rule, 32 C.F.R. Part 232, including the identification of covered borrower described by 32 C.F.R. §232.5;

(viii) complete documentation of any ancillary products (including insurance or an automobile club) offered to the consumer or purchased by the consumer in connection with the transaction;

(ix) complete documentation of all payments made by or to the licensee during the transaction and all payments made by or to the third-party lender at the inception of the transaction (including the amount of each payment, the source of each payment, and the recipient of each payment);

(x) any other documentation created or obtained by the licensee in connection with the transaction.

(B) The transaction file must include the following documentation if the licensee services or collects a loan in connection with a transaction under Texas Finance Code, Chapter 393, or if the licensee otherwise obtains this documentation in the course of business:

(i) Consumer's account record. The licensee must maintain an account record containing at least the following information:

(I) loan number or another unique number identifying the transaction;

(II) loan schedule and terms itemized to show the number of installments and the due date and amount of each installment, including installments payable to the licensee;

(III) name, address, and telephone number of consumer;

(IV) names and addresses of co-borrowers, if any;

(V) principal balance;

(VI) total interest charges;

(VII) all fees paid to the licensee;

(VIII) amount of official fees for recording, amending, or continuing a notice of security interest that are collected at the time the loan is made;

(IX) individual payment entries for all payments described by subparagraph (A)(ix) of this paragraph, and any other payments made by the consumer during the transaction, itemized to show the date payment was received (dual postings are acceptable if date of posting is other than date of receipt), actual amounts received for application to due amounts, and actual amounts paid for default, deferment, or other authorized charges;

(X) any refunds of unearned charges that are required in the event a loan is prepaid in full, including records of final entries, and entries to substantiate that refunds due were paid to consumers, with refund amounts itemized to show interest charges or other amounts refunded;

(XI) collection contact history, including a written or electronic record of each contact made by a licensee with the consumer or any other person and each contact made by the consumer with the licensee, in connection with amounts due, with each record including the date, method of contact, contacted party, person initiating the contact, and a summary of the contact;

(XII) corrective entries to the consumer's account record, if justified, including the reason and supporting documentation for each corrective entry.

(ii) Payday loan records. For a payday loan, the transaction file must include documentation relating to the personal check or authorization to debit a deposit account accepted in connection with the loan.

(iii) Auto title loan records. For an auto title loan, the transaction file must include all documentation relating to the attachment and perfection of a security interest in the motor vehicle, including any of the following documentation obtained by the licensee:

(I) the security agreement;

(II) if obtained by the licensee or the third-party lender, the original certificate of title to the vehicle, a certified copy of the negotiable certificate of title, or a copy of the front and back of either the original or certified copy of the title;

(III) if executed by the licensee or the third-party lender, an application for certificate of title (Texas Department of Motor Vehicles Form 130-U for Texas vehicles);

(IV) if obtained by the licensee or the third-party lender, a title application receipt (Texas Department of Motor Vehicles Form VTR-500-RTS for Texas vehicles), or a similar document evidencing the filing of the application for certificate of title and payment of required fees and taxes.

(iv) Repossession records. The transaction file must include complete documentation of any repossession initiated by the licensee, including:

(I) any condition report indicating the condition of the collateral, if prepared by the licensee, the licensee's agent, or any independent contractor hired to perform the repossession;

(II) any invoices or receipts for any reasonable and authorized out-of-pocket expenses that are assessed to the consumer and incurred in connection with the repossession or sequestration of the vehicle including cost of storing, reconditioning, and reselling the vehicle;

(III) for a vehicle disposed of in a public or private sale as permitted by the Texas Business and Commerce Code, §9.610, the following documents:

(-a-) one of the following notices:

(-1-) a copy of the notification of disposition as sent to the consumer and other obligors as required by Texas Business and Commerce Code, §9.614; or

(-2-) a copy of the waiver of the notice of intended disposition prescribed by subitem (-1-) of this item, as applicable, signed by the consumer and other obligors after default;

(-b-) copies of evidence of the type or manner of private sale that was conducted. These records must show that the manner of the disposition was commercially reasonable, such as circumstances surrounding a dealer-only auction, internet sale, or other type of private disposition;

(-c-) copies of evidence of the type or manner of public sale that was conducted. These records must show that the manner of the disposition was commercially reasonable, such as documentation of the date, place, manner of sale of the vehicle, and amounts received for disposition of the vehicle;

(-d-) the bill of sale showing the name and address of the purchaser of the repossessed collateral and the purchase price of the vehicle;

(-e-) for a disposition or sale of collateral creating a surplus balance, a copy of the check representing the payment of the surplus balance paid to the consumer or other person entitled to the surplus;

(-f-) for a disposition or sale of collateral resulting in a surplus or deficiency, a copy of the explanation of calculation of surplus or deficiency, if required by Texas Business and Commerce Code, §9.616;

(-g-) a copy of the waiver of the deficiency letter if the licensee elects to waive the deficiency balance in lieu of sending the explanation of calculation of surplus or deficiency form, if applicable;

(IV) for a vehicle disposed of using the strict foreclosure method permitted by the Texas Business and Commerce Code, §9.620 and §9.621, the following documents:

(-a-) one of the two following notices:

(-1-) a copy of the proposal to accept collateral in full satisfaction of the obligation; or

(-2-) for a transaction where 60% or more of the principal balance has been paid, a copy of the debtor or obligor's waiver of compulsory disposition of collateral signed by the consumer and other obligors after default;

(-b-) for a transaction where the consumer rejects the offer under item (-a-)(-1-) or (-2-) of this subclause, a copy of the consumer's signed objection to retention of the collateral;

(-c-) copies of the records reflecting the total satisfaction of the obligation.

(v) Litigation records. The transaction file must include complete documentation of any litigation filed by a licensee against a consumer, or by a consumer against the licensee, including all pleadings, the terms of settlement (if a settlement was entered), documentation of any mediation or arbitration, the final judgment (if the court entered a final judgment), and records of all payments received after judgment, properly identified and applied. If the licensee maintains the complete documentation of litigation at a centralized location other than the licensed location or branch office, then the licensee's transaction file may include a written summary of the status of the litigation, rather than complete documentation of the litigation. However, upon the OCCC's request, the licensee must have the ability to promptly obtain or access copies of the complete documentation so that the OCCC can examine it.

(vi) Criminal charge records. The transaction file must include complete documentation of any criminal charge or complaint filed by a licensee against a consumer, showing the licensee's compliance with Texas Finance Code, §393.201(c)(3). This must include any written evidence of criminal conduct, a written summary of any oral statement submitted to law enforcement, any police report, and any court records obtained by the licensee.

(vii) Claim records for insurance or ancillary products. The transaction file must include complete documentation of any claims or disbursement of money related to insurance or another ancillary product provided in connection with the transaction.

(viii) Transfer records. The transaction file must include transfer, assignment, or sale records for any loan transferred, assigned, or sold to or from another person.

(C) The transaction file and its contents must be retained for four years from the date of the transaction, or two years from the date of the final entry made on the consumer's account, whichever is later. However, this retention period does not apply to the credit services organization disclosure required by Texas Finance Code, §393.105, which must be kept for two years from the date on which it is provided to the consumer, as provided by Texas Finance Code, §393.106.

(3) Agreements between licensee and third-party lender. A licensee must maintain all documentation of its current agreements with third-party lenders, including copies of the agreement, any guarantees or letters of credit, and underwriting guidelines issued by the lender. The documentation must show the licensee's compliance with

Texas Finance Code, §393.001(3). The licensee may maintain this documentation at a centralized location other than the licensed location or branch office if the agreements apply to multiple locations. However, upon the OCCC's request, the licensee must have the ability to promptly obtain or access copies of the complete documentation so that the OCCC can examine it. If an agreement terminates, documentation of the agreement must be maintained until the latest of:

(A) four years from the date of the last consumer transaction subject to the agreement;

(B) two years from the date of the final entry made on the consumer's account in the last consumer transaction subject to the agreement;

(C) one year from the date of termination of the agreement; or

(D) the OCCC's next examination of the licensee (if the documentation is maintained at a centralized location, this refers to the next examination of the centralized location).

(4) In-store fee schedule and notices. The in-store fee schedule and notices required by Texas Finance Code, §393.222(a), and §83.6003(a) of this title must be available for inspection by the OCCC in a conspicuous location visible to the general public. If a licensee amends the in-store fee schedule or notices, it must maintain documentation of the previous versions of the schedule or notices for one year from the date of amendment or until the next examination by OCCC staff, whichever is later. The licensee may maintain the documentation of previous in-store fee schedules and notices at a centralized location other than the licensed location or branch office. In this case, the documentation must be maintained for one year from the date of amendment or until the OCCC's next examination of the centralized location, whichever is later. However, upon the OCCC's request, the licensee must have the ability to promptly obtain or access copies of the complete documentation so that the OCCC can examine it.

(5) Website and online disclosures. If a licensee maintains a website, it must make the website available to the OCCC for inspection. The website must include a fee schedule to show the licensee's compliance with §83.6003(b) of this title, and applicable consumer disclosures to show the licensee's compliance with §83.6007(f) of this title. If a licensee amends the website's fee schedule, consumer disclosures, or method of accessing the fee schedule or consumer disclosures, the licensee must maintain documentation of the previous version of the website to show compliance with §83.6003(b) of this title and §83.6007(f) of this title. This must include the home page, any pages used in accessing the fee schedule and disclosures, and copies of the previously used fee schedule and disclosures. The licensee must maintain this documentation for one year from the date of amendment or until the next examination by OCCC staff, whichever is later. This paragraph does not require a licensee to maintain previously used pages of the website that were not the home page or pages used in accessing the fee schedule and consumer disclosures. The licensee may maintain the documentation of previous versions of the website at a centralized location other than the licensed location or branch office. In this case, the documentation must be maintained for one year from the date of amendment or until the OCCC's next examination of the centralized location, whichever is later. However, upon the OCCC's request, the licensee must have the ability to promptly obtain or access copies of the complete documentation so that the OCCC can examine it.

(6) Advertisements. A licensee must maintain advertising and solicitation records, including examples of all written and electronic communications soliciting transactions (including advertisements at the place of business, scripts of radio and television broadcasts, and reproductions of billboards and signs not at the licensed place of business) for one year from the date of use or until the next examination by OCCC staff, whichever is later. If any language other than English is used in any advertising material, a true and correct translation must be maintained along with the advertising material. The licensee may maintain the documentation of advertising at a centralized location other than the licensed location or branch office. In this case, the documentation must be maintained for one year from the date of amendment or until the OCCC's next examination of the centralized location, whichever is later. However, upon the OCCC's request, the licensee must have the ability to promptly obtain or access copies of the complete documentation so that the OCCC can examine it.

(7) Adverse action records. Each licensee must maintain adverse action records for all applications relating to Texas Finance Code, Chapter 393 transactions. Adverse action records must be maintained according to the record retention requirements in Regulation B, 12 C.F.R. §1002.12(b). The current retention period is 25 months for consumer credit. These records include the loan application, any written or recorded information used in evaluating the application, the adverse action notice (if required), the notice of incompleteness (if applicable), and counteroffer notice (if applicable).

(8) Index of transfers, assignments, and sales. The licensee must maintain (or be able to produce within a reasonable period of time) an index of all loans transferred, assigned, or sold to or from another person, including a third-party lender, or to a different location of the licensee. Each record in the index must be retained for four years from the date of the transaction, or two years from the date of the final entry made on the consumer's account, whichever is later. (For transfers from the licensee, the date of transfer is the date of the final entry.)

(9) Index of litigation, criminal charges, and repossessions. A licensee must maintain (or be able to produce within a reasonable period of time) an index of each litigation action and criminal charge filed by or against the licensee, as well as each repossession initiated by the licensee. The index must show the consumer's name, account number, and date of action. Each record in the index must be retained for a period of four years from the date of the transaction, or two years from the date of the final entry made on the consumer's account, whichever is later.

(10) Registration and surety bond records. A licensee must maintain documentation of its registration as a credit services organization with the Texas Secretary of State, including its registration statement and registration certificate, to show its compliance with Texas Finance Code, §393.101. A licensee must maintain complete documentation of any surety bond obtained by the licensee under Texas Finance Code, §393.401, and any surety bond required by the OCCC under Texas Finance Code, §393.605. If a registration or surety bond terminates, the licensee must maintain the documentation for one year after the date of termination or until the next examination by OCCC staff, whichever is later.

(11) Official correspondence file. A licensee must maintain an official correspondence file, including all communications from the OCCC, copies of correspondence and reports addressed to the OCCC (including quarterly and annual reports), examination reports issued by the OCCC, and notices of relocation described by §83.3008 of this title (relating to Relocation of Licensed Office).

(12) General business records. A licensee must maintain any other business records showing its compliance with applicable law, including accounting records showing that the licensee maintains net assets required by Texas Finance Code, §393.611, records used to compile quarterly and annual reports, records of disbursement of funds be-

tween the licensee and third-party lenders, receipts, bank statements, and any master insurance policies.

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 December 18, 2015.

TRD-201505818
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: January 7, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7621

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CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES
SUBCHAPTER F. LICENSING

7 TAC §84.608

The Finance Commission of Texas (commission) adopts amendments to Title 7 of the Texas Administrative Code, §84.608, concerning the rules applicable to a motor vehicle installment sales license application denial hearing.

The commission adopts the amendments without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7535). The rules will not be republished.

The commission received no written comments on the proposal.

In general, the purpose of these amendments is to clarify which rules of procedure are applicable to a contested case hearing for persons regulated by the Office of Consumer Credit Commissioner.

The commission has previously adopted rules of procedure applicable to a contested case hearing conducted by an administrative law judge employed by or contracted by a finance agency. *See,* 7 TAC §9.1. The Office of Consumer Credit Commissioner (OCCC) has recently contracted with the State Office of Administrative Hearings (SOAH) to conduct contested case hearings. SOAH applies its own procedural rules to all matters referred to SOAH, unless otherwise required by statute or rule. 1 TAC §155.1(a).

Concurrent with these adopted rule amendments, the commission is adopting amendments to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions; former title: Definitions and Interpretation; Severability) to clarify which rules of procedure apply to a contested case hearing conducted by an administrative law judge contracted by a finance agency, and which rules apply to a hearing conducted by SOAH. Amended subsection (a) in §9.1 as adopted will read: "This chapter governs contested case hearings conducted by an administrative law judge employed or contracted by an agency. All contested case hearings conducted by the State Office of Administrative Hearings (SOAH) are governed by SOAH's procedural rules found at Title 1, Chapter 155 of the Texas Administrative Code."

Title 7, Part 5 (relating to the OCCC), contains eight references to the Chapter 9 rules of procedure. The adopted amendments replace these references with references to the rules of procedure made applicable by the amendment to §9.1(a) of Title 7, described earlier. Accordingly, the amendments will clarify that Chapter 9 rules of procedure apply to a contested case hearing conducted by an administrative law judge contracted by a finance agency, and SOAH rules of procedure apply to a hearing conducted by SOAH.

Section 84.608(d) identifies the rules of procedure applicable to a motor vehicle installment sales license application denial hearing. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

The amendments are adopted under Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The amendments are further adopted under the authority of Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code; Texas Finance Code, §11.306, which authorizes the commission to adopt residential mortgage loan origination rules as provided by Chapter 156; Texas Finance Code, §180.004, which authorizes the commission to adopt rules to enforce Chapter 180; and Texas Finance Code, §393.622, which authorizes the commission to adopt rules to enforce Chapter 393.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14, 156, 180, 339, 393, and Title 4.

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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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7621

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CHAPTER 85. PAWNSHOPS AND CRAFTED PRECIOUS METAL DEALERS
SUBCHAPTER A. RULES OF OPERATION FOR PAWNSHOPS

The Finance Commission of Texas (commission) adopts amendments to the following sections of Title 7 of the Texas Administrative Code: §85.206, concerning the rules applicable to a pawnshop employee license application denial hearing; §85.304, concerning the rules applicable to a pawnshop license application denial hearing; and §85.607, concerning the rules applicable to a pawnshop license revocation, suspension, and surrender hearing.

The commission adopts the amendments without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7536). The rules will not be republished.

The commission received no written comments on the proposal.

In general, the purpose of these amendments is to clarify which rules of procedure are applicable to a contested case hearing for persons regulated by the Office of Consumer Credit Commissioner.

The commission has previously adopted rules of procedure applicable to a contested case hearing conducted by an administrative law judge employed by or contracted by a finance agency. *See,* 7 Texas Administrative Code §9.1. The Office of Consumer Credit Commissioner (OCCC) has recently contracted with the State Office of Administrative Hearings (SOAH) to conduct contested case hearings. SOAH applies its own procedural rules to all matters referred to SOAH, unless otherwise required by statute or rule. 1 Texas Administrative Code §155.1(a).

Concurrent with these adopted rule amendments, the commission is adopting amendments to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions; former title: Definitions and Interpretation; Severability) to clarify which rules of procedure apply to a contested case hearing conducted by an administrative law judge contracted by a finance agency, and which rules apply to a hearing conducted by SOAH. Amended subsection (a) in §9.1 as adopted will read: "This chapter governs contested case hearings conducted by an administrative law judge employed or contracted by an agency. All contested case hearings conducted by the State Office of Administrative Hearings (SOAH) are governed by SOAH's procedural rules found at Title 1, Chapter 155 of the Texas Administrative Code."

Title 7, Part 5 (relating to the OCCC), contains eight references to the Chapter 9 rules of procedure. The adopted amendments replace these references with references to the rules of procedure made applicable by the amendment to §9.1(a) of Title 7, described earlier. Accordingly, the amendments will clarify that Chapter 9 rules of procedure apply to a contested case hearing conducted by an administrative law judge contracted by a finance agency, and SOAH rules of procedure apply to a hearing conducted by SOAH.

Section 85.206(g) identifies the rules of procedure applicable to a pawnshop employee license application denial hearing. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section 85.304(e) identifies the rules of procedure applicable to a pawnshop license application denial hearing. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section 85.607 identifies the rules of procedure applicable to a pawnshop license revocation, suspension, and surrender hearing. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Regarding the adopted changes, §371.006 of the Texas Finance Code contains a provision requiring notice to licensees concerning rulemaking for the pawnshop industry. In order to comply with this statutory notice requirement, the delayed effective date for the amendments to §§85.206, 85.304, and 85.607 will be March 1, 2016.

DIVISION 2. PAWNSHOP LICENSE

7 TAC §85.206

The amendments are adopted under Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The amendments are further adopted under the authority of Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code; Texas Finance Code, §11.306, which authorizes the commission to adopt residential mortgage loan origination rules as provided by Chapter 156; Texas Finance Code, §180.004, which authorizes the commission to adopt rules to enforce Chapter 180; and Texas Finance Code, §393.622, which authorizes the commission to adopt rules to enforce Chapter 393.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14, 156, 180, 339, 393, and Title 4.

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-201505806
Leslie L. Pettijohn
Commissioner
Office of the Consumer Credit Commissioner
Effective date: March 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7621

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DIVISION 3. PAWNSHOP EMPLOYEE LICENSE

7 TAC §85.304

The amendments are adopted under Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The amendments are further adopted under the authority of Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code; Texas Finance Code, §11.306, which authorizes the commission to adopt residential mortgage loan origination rules as provided by Chapter 156; Texas Finance Code, §180.004, which authorizes the commission to adopt rules to enforce Chapter 180; and Texas Finance Code, §393.622, which authorizes the commission to adopt rules to enforce Chapter 393.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14, 156, 180, 339, 393, and Title 4.

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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Leslie L. Pettijohn
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Office of the Consumer Credit Commissioner
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For further information, please call: (512) 936-7621

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DIVISION 6. LICENSE REVOCATION, SUSPENSION, AND SURRENDER

7 TAC §85.607

The amendments are adopted under Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The amendments are further adopted under the authority of Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code; Texas Finance Code, §11.306, which authorizes the commission to adopt residential mortgage loan origination rules as provided by Chapter 156; Texas Finance Code, §180.004, which authorizes the commission to adopt rules to enforce Chapter 180; and Texas Finance Code, §393.622, which authorizes the commission to adopt rules to enforce Chapter 393.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14, 156, 180, 339, 393, and Title 4.

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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Leslie L. Pettijohn
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For further information, please call: (512) 936-7621

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CHAPTER 88. CONSUMER DEBT MANAGEMENT SERVICES
SUBCHAPTER A. REGISTRATION PROCEDURES

7 TAC §88.103

The Finance Commission of Texas (commission) adopts amendments to Title 7 of the Texas Administrative Code, §88.103, concerning the rules applicable to a consumer debt management services registration application denial hearing.

The commission adopts the amendments without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7538). The rule will not be republished.

The commission received no written comments on the proposal.

In general, the purpose of these amendments is to clarify which rules of procedure are applicable to a contested case hearing for persons regulated by the Office of Consumer Credit Commissioner.

The commission has previously adopted rules of procedure applicable to a contested case hearing conducted by an administrative law judge employed by or contracted by a finance agency. *See,* 7 TAC §9.1. The Office of Consumer Credit Commissioner (OCCC) has recently contracted with the State Office of Administrative Hearings (SOAH) to conduct contested case hearings. SOAH applies its own procedural rules to all matters referred to SOAH, unless otherwise required by statute or rule. 1 TAC §155.1(a).

Concurrent with these adopted rule amendments, the commission is adopting amendments to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions; former title: Definitions and Interpretation; Severability) to clarify which rules of procedure apply to a contested case hearing conducted by an administrative law judge contracted by a finance agency, and which rules apply to a hearing conducted by SOAH. Amended subsection (a) in §9.1 as adopted will read: "This chapter governs contested case hearings conducted by an administrative law judge employed or contracted by an agency. All contested case hearings conducted by the State Office of Administrative Hearings (SOAH) are governed by SOAH's procedural rules found at Title 1, Chapter 155 of the Texas Administrative Code."

Title 7, Part 5 (relating to the OCCC), contains eight references to the Chapter 9 rules of procedure. The adopted amendments replace these references with references to the rules of procedure made applicable by the amendment to §9.1(a) of Title 7, described earlier. Accordingly, the amendments will clarify that Chapter 9 rules of procedure apply to a contested case hearing conducted by an administrative law judge contracted by a finance agency, and SOAH rules of procedure apply to a hearing conducted by SOAH.

Section 88.103(d) identifies the rules of procedure applicable to a consumer debt management services registration application denial hearing. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

The amendments are adopted under Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The amendments are further adopted under the authority of Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code; Texas Finance Code, §11.306, which authorizes the commission to adopt residential mortgage loan origination rules as provided by Chapter 156; Texas Finance Code, §180.004, which authorizes the commission to adopt rules to enforce Chapter 180; and Texas Finance Code, §393.622, which authorizes the commission to adopt rules to enforce Chapter 393.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14, 156, 180, 339, 393, and Title 4.

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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Leslie L. Pettijohn
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For further information, please call: (512) 936-7621

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CHAPTER 89. PROPERTY TAX LENDERS
SUBCHAPTER C. APPLICATION PROCEDURES

7 TAC §89.307

The Finance Commission of Texas (commission) adopts amendments to Title 7 of the Texas Administrative Code, §89.307, concerning the rules applicable to a property tax lender license application denial hearing.

The commission adopts the amendments without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7539). The rule will not be republished.

The commission received no written comments on the proposal.

In general, the purpose of these amendments is to clarify which rules of procedure are applicable to a contested case hearing for persons regulated by the Office of Consumer Credit Commissioner.

The commission has previously adopted rules of procedure applicable to a contested case hearing conducted by an administrative law judge employed by or contracted by a finance agency. *See,* 7 TAC §9.1. The Office of Consumer Credit Commissioner (OCCC) has recently contracted with the State Office of Administrative Hearings (SOAH) to conduct contested case hearings. SOAH applies its own procedural rules to all matters referred to SOAH, unless otherwise required by statute or rule. 1 TAC §155.1(a).

Concurrent with these adopted rule amendments, the commission is adopting amendments to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions; former title: Definitions and Interpretation; Severability) to clarify which rules of procedure apply to a contested case hearing conducted by an administrative law judge contracted by a finance agency, and which rules apply to a hearing conducted by SOAH. Amended subsection (a) in §9.1 as adopted will read: "This chapter governs contested case hearings conducted by an administrative law judge employed or contracted by an agency. All contested case hearings conducted by the State Office of Administrative Hearings (SOAH) are governed by SOAH's procedural rules found at Title 1, Chapter 155 of the Texas Administrative Code."

Title 7, Part 5 (relating to the OCCC), contains eight references to the Chapter 9 rules of procedure. The adopted amendments replace these references with references to the rules of procedure made applicable by the amendment to §9.1(a) of Title 7, described earlier. Accordingly, the amendments will clarify that Chapter 9 rules of procedure apply to a contested case hearing conducted by an administrative law judge contracted by a finance agency, and SOAH rules of procedure apply to a hearing conducted by SOAH.

Section 89.307(d) identifies the rules of procedure applicable to a property tax lender license application denial hearing. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

The amendments are adopted under Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The amendments are further adopted under the authority of Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code; Texas Finance Code, §11.306, which authorizes the commission to adopt residential mortgage loan origination rules as provided by Chapter 156; Texas Finance Code, §180.004, which authorizes the commission to adopt rules to enforce Chapter 180; and Texas Finance Code, §393.622, which authorizes the commission to adopt rules to enforce Chapter 393.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14, 156, 180, 339, 393, and Title 4.

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 December 18, 2015.

TRD-201505813
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7621

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TITLE 10. COMMUNITY DEVELOPMENT
PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS
SUBCHAPTER A. GENERAL PROVISIONS

10 TAC §5.2, §5.10

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, Community Affairs Programs, Subchapter A, General Provisions, §5.2, Definitions, and §5.10, Procurement Standards, without

changes to the proposed text as published in the August 14, 2015, issue of the *Texas Register* (40 TexReg 5113).

REASONED JUSTIFICATION. The purpose of the amendments to 10 TAC §5.2 is to remove definitions specific to the Community Services Block Grant ("CSBG"), Comprehensive Energy Assistance Program ("CEAP"), and the Weatherization Assistance Program ("WAP") from the General Provisions subchapter and add them to the program sections of the rules; and to change the client income eligibility threshold for the CEAP and the Low Income Home Energy Assistance Program ("LIHEAP") WAP from 125% to 150% of the federal poverty level. The purpose of the amendments to 10 TAC §5.10 is to change the name of the section to Purchase and Procurement Standards to incorporate the procurement requirement relating to purchase pre-approval from §5.12 to §5.10; to clarify the requirements of "aggregate"; and to incorporate changes to procurement requirements introduced by the updated 2 CFR Part 200.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

No substantive comments were received from August 14, 2015, through September 14, 2015.

STATUTORY AUTHORITY. The amended sections are adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which authorizes the Department to administer its Community Affairs programs.

The adopted amendments affect no other code, article, or statute.

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

Filed with the Office of the Secretary of State on December 14, 2015.

TRD-201505595
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 3, 2016
Proposal publication date: August 14, 2015
For further information, please call: (512) 475-0471

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10 TAC §5.7

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC §5.7, Fidelity Bond Requirements, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7546).

REASONED JUSTIFICATION. The purpose of the amendments to 10 TAC §5.7 is to remove reference to the Office of Management and Budget ("OMB") Circular A-110 "Administrative Requirements for Grants to Non-Profits", which has been replaced by requirements included in 2 Code of Federal Regulations ("CFR") Part 200 and addressed elsewhere in this Subchapter, and update Subrecipient requirements for fidelity bond documentation.

At the October 15, 2015 Board Meeting, the Board adopted this rule.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Comments were accepted from October 23, 2015, through November 23, 2015. No comments were received.

STATUTORY AUTHORITY. The amended section is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which authorizes the Department to administer its Community Affairs programs.

The amendments affect no other code, article, or statute.

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

Filed with the Office of the Secretary of State on December 18, 2015.

TRD-201505834
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 7, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 475-0471

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SUBCHAPTER D. COMPREHENSIVE ENERGY ASSISTANCE PROGRAM

10 TAC §§5.401, 5.407, 5.422, 5.423

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, Subchapter D, §5.401, Background; §5.407, Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria; §5.422, General Assistance and Benefit Levels; and §5.423, Household Crisis Component, with changes to the proposed text as published in the August 14, 2015, issue of the *Texas Register* (40 TexReg 5124).

REASONED JUSTIFICATION. The purpose of the amendments to 10 TAC §5.401 is to change the name of the subsection to "Background and Definitions" and to add definitions specific to the CEAP that were removed from Subchapter A, General Provisions. The purpose of the amendments to 10 TAC §5.407 and §5.422 is to raise the client income eligibility level to at or below 150% of the federal poverty level; to add the requirement that highest energy costs or needs in relation to income ("energy burden") shall be the highest rated item in priority determinations; and to add categorical eligibility, whereby pursuant to Section 2605(b)(2)(A) of Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35), as amended ("the LIHEAP Act"), states may make payments to households in which at least one individual is receiving supplemental security income payments issued under Title XVI of the Social Security Act and/or veterans benefit payments issued under the Veterans' and Survivors' Pension Improvement Act of 1978. The purpose of the amendment to 10 TAC §5.423 is to add the ability for Subrecipients to purchase portable heating/cooling units for households

experiencing a Life Threatening Crisis whether or not the established weather criteria had been met.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Comments were accepted from August 14, 2015, through September 14, 2015. The Department's response to all comments received is set out below. The comments and responses include both administrative clarifications and corrections to the amendments recommended by staff and substantive comments on the amendments and the corresponding departmental responses. Comments and responses are presented in the order they appear in the rules, with comments received from:

Stella Rodriguez, Executive Director, Texas Association of Community Action Agencies (TACAA)

COMMENT SUMMARY: Regarding §5.407(f) - Commenter states that members of TACAA do not support the replacement of §5.407(e) with §5.407(f).

COMMENTER'S RATIONALE: The wording in (f) suggests that Subrecipients are usually able to determine whether the meter is utilized by more than one Household. It is not the responsibility of the Subrecipient to police this condition, only to act when it is clearly discovered that the meter is being improperly used. It is unclear how obtaining written approval from Community Affairs Division ("CAD") staff could benefit the program. The added procedure to obtain written approval from CAD would delay assistance, could allow shut-off of utility service, and in a crisis situation, could cause a dangerous condition for applicant Households.

STAFF RESPONSE: Staff appreciates the input and realizes the intent of the change was not clear. The rule change is intended to address those instances in which separate structures share a meter, and provide clarity that if the occupants of the separate structures that share a meter submit an application as one household, that applicant may be served. In those cases, the members and income from both households must be counted when determining eligibility. As currently written, the rule forbids this option.

To be more clear, staff recommends the following revision to the proposed language in 10 TAC §5.407(f):

(f) Household units where the Subrecipient is unable to determine whether the meter is utilized by another Household may not be served without written approval from Community Affairs Division staff. A Household unit cannot be served if the meter is utilized by another Household that is not a part of the application for assistance. In instances where separate structures share a meter and the applicant is otherwise eligible for assistance, Subrecipient may provide services if:

(1) the members of the separate structures that share a meter meet the definition of a Household per §5.2 of this Chapter;

(2) the members of the separate structures that share a meter submit one application as one Household; and

(3) all persons and applicable income from each structure are counted when determining eligibility.

So that assistance is not unnecessarily delayed, staff does not suggest that Subrecipients be required to contact staff prior to serving such households. Should Subrecipients have questions or concerns about a particular case, staff will provide technical assistance upon request.

At the board meeting on October 15, 2015, the Board adopted this rule.

STATUTORY AUTHORITY. The amended sections are adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules, §2105.059, which authorizes the Department to adopt rules for block grant programs, and Chapter 2306, Subchapter E, which authorizes the Department to administer its Community Affairs programs.

The amendments affect no other code, article, or statute.

§5.401. Background and Definitions.

(a) The Comprehensive Energy Assistance Program (CEAP) is funded through the Low Income Home Energy Assistance Act of 1981 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, as amended). LIHEAP has been in existence since 1982. LIHEAP is a federally funded block grant program that is implemented to serve low income Households who seek assistance for their home energy bills.

(b) Definitions.

(1) Categorical Eligibility: use of funds whereby Subrecipients may deem income eligible Households that include at least one member that receives:

(A) Supplemental security income payments (SSI) from the Social Security Administration; or

(B) Veterans benefit payments under:

(i) Section 415 - Dependency and Indemnity Compensation to Parents of a Deceased Veteran;

(ii) Section 521 - Veterans of a Period of War (a Veteran who is permanently and totally disabled);

(iii) Section 541 - Spouses and Children" (of a deceased Veteran); or

(iv) Section 542 - Children of Deceased Veterans of a Period of War.

(2) Emergency--Defined by the LIHEAP Act of 1981 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, 42 U.S.C. §8622):

(A) natural disaster;

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

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

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

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

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

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

(3) Life Threatening Crisis--A life threatening crisis exists when at least one person in the applicant Household could lose their life without the Subrecipient's utility assistance because there is a shut-off notice or a delivered fuel source is below a ten (10) day supply (by client report) and any member of the Household is dependent upon equipment that is prescribed by a medical professional, operated on electricity or gas and is necessary to sustain the person's life. Examples of life-sustaining equipment include but are not limited to kidney dialysis machines, oxygen concentrators, cardiac monitors, and in some cases heating and air conditioning when ambient temperature control is prescribed by a medical professional. Documentation must not include information regarding the applicant's medical condition but may include certification that such a device is required in the home to sustain life.

§5.407. Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria.

(a) Subrecipients shall set the client income eligibility level at or below 150% of the federal poverty level in effect at the time the client makes an application for services.

(b) Subrecipients shall determine client income. Income exclusions to be used to determine total Household income are those noted in §5.19 of this chapter (relating to Client Income Guidelines).

(c) Social security numbers are not required for applicants for CEAP.

(d) Subrecipients shall establish priority criteria to serve persons in Households who are particularly vulnerable such as the Elderly, Persons with Disabilities, Families with Young Children, Households with High Energy Burden, and Households with High Energy Consumption. Highest energy costs or needs in relation to income shall be the highest rated item in sliding scale priority determinations.

(e) Categorical eligibility exists when any member of the household receives cash assistance payments from SSI and/or from veterans benefits as described in subsection 5.401 of this section.

(1) A complete application is required for all households, including those that are categorically eligible. Total household income documentation must be collected by the agency for the purposes of determining benefit level and collecting required demographic information.

(2) Recipients of regular social security payments are not automatically categorically eligible.

(3) Applicants shall provide the agency a letter from the cognizant federal agency stating under what Public Law or U.S. Code Title his/her benefit is received.

(f) Household units where the Subrecipient is unable to determine whether the meter is utilized by another Household may not be served without written approval from Community Affairs Division staff. A Household unit cannot be served if the meter is utilized by another Household that is not a part of the application for assistance. In instances where separate structures share a meter and the applicant is otherwise eligible for assistance, Subrecipient may provide services if:

(1) the members of the separate structures that share a meter meet the definition of a Household per §5.2 of this Chapter;

(2) the members of the separate structures that share a meter submit one application as one Household; and

(3) all persons and applicable income from each structure are counted when determining eligibility.

§5.422. General Assistance and Benefit Levels.

(a) Subrecipients shall not discourage anyone from applying for CEAP assistance. Subrecipients shall provide all potential clients with opportunity to apply for LIHEAP programs.

(b) CEAP provides assistance to targeted beneficiaries, with priority given to the elderly, persons with disabilities, families with young children; Households with the highest energy costs or needs in relation to income, and Households with high energy consumption.

(c) CEAP includes activities, as defined in Assurances 1-16 in Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35), as amended; such as education; and financial assistance to help very low- and extremely low-income consumers reduce their utility bills to an affordable level. CEAP services include energy education, needs assessment, budget counseling (as it pertains to energy needs), utility payment assistance; repair of existing heating and cooling units, and crisis-related purchase of portable heating and cooling units.

(d) Sliding scale benefit for all CEAP components:

(1) Benefit determinations are based on the Household's income, the Household size, the energy cost and/or the need of the Household, and the availability of funds;

(2) Energy assistance benefit determinations will use the sliding scale described in subparagraphs (A) - (C) of this paragraph:

(A) Households with Incomes of 0 to 50% of Federal Poverty Guidelines may receive an amount needed to address their energy payment shortfall not to exceed $1,200;

(B) Households with Incomes of 51% to 75% of Federal Poverty Guidelines may receive an amount needed to address their energy payment shortfall not to exceed $1,100; and

(C) Households with Incomes of 76% to at or below 150% of Federal Poverty Guidelines may receive an amount needed to address their energy payment shortfall not to exceed $1,000; and

(3) A Household may receive repair of existing heating and cooling units not to exceed $3,000. Households that include at least one member that is elderly, disabled, or a child age 5 or younger, may receive either repair of existing heating and cooling units or crisis-related purchase of portable heating and cooling units not to exceed $3,000.

(e) Subrecipient shall not establish lower local limits of assistance for any component.

(f) Total maximum possible annual Household benefit (all allowable benefits combined) equals $5,400.

(g) Subrecipient shall determine client eligibility for utility payments and/or retrofit based on the agency's Household priority rating system and Household's income as a percent of poverty.

(h) Subrecipients shall provide only the types of assistance described in paragraphs (1) - (11) of this subsection with funds from CEAP:

(1) Payment to vendors and suppliers of fuel/utilities, goods, and other services, such as past due or current bills related to the procurement of energy for heating and cooling needs of the residence, not to include security lights and other items unrelated to energy assistance;

(2) Payment to vendors--only one energy bill payment per month;

(3) Needs assessment and energy conservation tips, coordination of resources, and referrals to other programs;

(4) Payment of water bills only when such costs include expenses from operating an evaporative water cooler unit or when the water bill is an inseparable part of a utility bill. As a part of the intake process, outreach, and coordination, the Subrecipient shall confirm that a client owns an operational evaporative cooler and has used it to cool the dwelling within sixty (60) days prior to application. Payment of other utility charges such as wastewater and waste removal are allowable only if these charges are an inseparable part of a utility bill. Documentation from vendor is required. Whenever possible, Subrecipient shall negotiate with the utility providers to pay only the "home energy"--heating and cooling--portion of the bill;

(5) Energy bills already paid may not be reimbursed by the program;

(6) Payment of reconnection fees in line with the registered tariff filed with the Public Utility Commission and/or Texas Railroad Commission. Payment cannot exceed that stated tariff cost. Subrecipient shall negotiate to reduce the costs to cover the actual labor and material and to ensure that the utility does not assess a penalty for delinquency in payments;

(7) Payment of security deposits only when state law requires such a payment, or if the Public Utility Commission or Texas Railroad Commission has listed such a payment as an approved cost, and where required by law, tariff, regulation, or a deferred payment agreement includes such a payment. Subrecipients shall not pay such security deposits that the energy provider will eventually return to the client;

(8) While rates and repair charges may vary from vendor to vendor, Subrecipient shall negotiate for the lowest possible payment. Prior to making any payments to an energy vendor a Subrecipient shall have a signed vendor agreement on file from the energy vendor receiving direct LIHEAP payments from the Subrecipient;

(9) Subrecipient may make payments to landlords on behalf of eligible renters who pay their utility and/or fuel bills indirectly. Subrecipient shall notify each participating Household of the amount of assistance paid on its behalf. Subrecipient shall document this notification. Subrecipient shall maintain proof of utility or fuel bill payment. Subrecipient shall ensure that amount of assistance paid on behalf of client is deducted from client's rent;

(10) In lieu of deposit required by an energy vendor, Subrecipient may make advance payments. The Department does not allow LIHEAP expenditures to pay deposits, except as noted in paragraph (7) of this subsection. Advance payments may not exceed an estimated two months' billings; and

(11) Funds for the Texas CEAP shall not be used to weatherize dwelling units, for medicine, food, transportation assistance (i.e., vehicle fuel), income assistance, or to pay for penalties or fines assessed to clients.

§5.423. Household Crisis Component.

(a) A bona fide Household crisis exists when extraordinary events or situations resulting from extreme weather conditions and/or fuel supply shortages or a terrorist attack have depleted or will deplete Household financial resources and/or have created problems in meeting basic Household expenses, particularly bills for energy so as to constitute a threat to the well-being of the Household, particularly the Elderly, the Disabled, or a Family with Young Children.

(b) A utility disconnection notice may constitute a Household crisis. Assistance provided to Households based on a utility disconnection notice is limited to two (2) payments per year. Weather criterion is not required to provide assistance due to a disconnection notice. The notice of disconnection must have been provided to the Subrecipient within the effective contract term and the notice of disconnection must not be dated more than sixty (60) days from receipt at the Subrecipient.

(c) Crisis assistance payments cannot exceed the minimum amount needed to resolve the crisis; e.g. when a shut-off notice requires a certain amount to be paid to avoid disconnection and the same notice indicates that there are balances due other than the required amount, only the amount required to avoid disconnection may be paid as crisis assistance. Crisis assistance payments that are less than the amount needed to resolve the crisis may only be made when other funds or options are available to resolve the Household's remaining crisis need.

(d) Crisis assistance for one Household cannot exceed the maximum allowable benefit level in one program year. If a Household's crisis assistance needs exceed that maximum allowable benefit, Subrecipient may pay up to the Household crisis assistance limit only if the remaining amount of Household need can be paid from other funds. If the Household's crisis requires more than the Household limit to resolve and no other funds are available, the crisis exceeds the scope of this component.

(e) Payments may not exceed Household's actual utility bill.

(f) Where necessary to prevent undue hardships from a qualified crisis, Subrecipients may directly issue vouchers to provide:

(1) Temporary shelter not to exceed the annual Household expenditure limit for the duration of the contract period in the limited instances that supply of power to the dwelling is disrupted--causing temporary evacuation;

(2) Emergency deliveries of fuel up to 250 gallons per crisis per Household, at the prevailing price. This benefit may include coverage for tank pressure testing;

(3) Service and repair of existing heating and cooling units not to exceed $3,000 during the contract period when Subrecipient has met local weather crisis criteria. If any component of the central system cannot be repaired using parts, the Subrecipient can replace the component in order to repair the central system. Documentation of service/repair and related warranty must be included in the client file;

(4) Portable air conditioning/evaporative coolers and heating units (portable electric heaters are allowable only as a last resort) may be purchased for households that include at least one member that is Elderly, Disabled, or a Family with Young Children, when Subrecipient has met local weather crisis criteria;

(5) When a Household's crisis meets the definition of Life Threatening Crisis, portable air conditioning/evaporative coolers and heating units (portable electric heaters are allowable only as a last resort) may be purchased for those Households regardless of whether Subrecipient has met local weather crisis criteria. All other provisions of this subsection apply;

(6) Purchase of more than two portable heating/cooling units per Household requires prior written approval from the Department;

(7) Purchase of portable heating/cooling units which require performance of electrical work for proper installation requires prior written approval from the Department;

(8) Replacement of central systems and combustion heating units is not an approved use of crisis funds; and

(9) Portable heating/cooling units must be Energy Star® and compliant with the 2009 International Residential Code (IRC). In cases where the type of unit is not rated by Energy Star®, or if Energy

Star® units are not available due to supply shortages, Subrecipient may purchase the highest rated unit available.

(g) Crisis funds, whether for emergency fuel deliveries, repair of existing heating and cooling units, purchase of portable heating/cooling units, or temporary shelter, shall be considered part of the total maximum Household allowable assistance.

(h) When natural disasters result in energy supply shortages or other energy-related emergencies, LIHEAP will allow home energy related expenditures for:

(1) Costs to temporarily shelter or house individuals in hotels, apartments or other living situations in which homes have been destroyed or damaged, i.e., placing people in settings to preserve health and safety and to move them away from the crisis situation;

(2) Costs for transportation (such as cars, shuttles, buses) to move individuals away from the crisis area to shelters, when health and safety is endangered by loss of access to heating or cooling;

(3) Utility reconnection costs;

(4) Blankets, as tangible benefits to keep individuals warm;

(5) Crisis payments for utilities and utility deposits; and

(6) Purchase of fans, air conditioners and generators. The number, type, size and cost of these items may not exceed the minimum needed to resolve the crisis.

(i) Time Limits for Assistance--Subrecipients shall ensure that for clients who have already lost service or are in immediate danger of losing service, some form of assistance to resolve the crisis shall be provided within a 48-hour time limit (18 hours in life-threatening situations). The time limit commences upon completion of the application process. The application process is considered to be complete when an agency representative accepts an application and completes the eligibility process.

(j) Subrecipients must maintain written documentation in client files showing crises resolved within appropriate timeframes. Subrecipients must maintain documentation in client files showing that a utility bill used as evidence of a crisis was received by the Subrecipient during the effective contract term. The Department may disallow improperly documented expenditures.

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 December 18, 2015.

TRD-201505835
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 7, 2016
Proposal publication date: August 14, 2015
For further information, please call: (512) 475-0471

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CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER A. GENERAL INFORMATION AND DEFINITIONS

10 TAC §§10.1 - 10.4

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules Subchapter A §§10.1 - 10.4, concerning General Information and Definitions without changes to the proposed text as published in the September 25, 2015, of the *Texas Register* (40 TexReg 6395) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 25, 2015, and October 15, 2015. Comments regarding the repealed were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 12, 2015.

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

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 December 17, 2015.

TRD-201505707
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 6, 2016
Proposal publication date: September 25, 2015
For further information, please call: (512) 475-3344

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10 TAC §§10.1 - 10.4

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter A, §§10.1 - 10.4 concerning General Information and Definitions. Section 10.3 is adopted with changes to the text as published in the September 25, 2015 issue of the *Texas Register* (40 TexReg 6395). Sections 10.1 - 10.2 and 10.4 are adopted without changes and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the sections will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended lan-

guage changes to the proposed Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

Public comments were accepted through October 15, 2015, with comments received from (3) Texas Affiliation of Affordable Housing Providers, (7) Rural Rental Housing Association of Texas, (22) Cynthia Bast, Lock Lord, (32) Texas Appleseed/Texas Low Income Housing Information Service, (34) Barry Palmer, Coats Rose.

1. §10.3 - Subchapter A - Definitions - Elderly Development (3), (7), (34)

COMMENT SUMMARY: Commenter (3), (7) requested clarification on why these definitions are necessary especially considering the sensitivity surrounding it by cities and other government entities. Commenter (7) requested similar clarification, particularly as they relate to Project Based Section 8 and USDA 515 properties and further stated that the definition changes are seen as detrimental to some elderly developments and recommended the elderly definition from the 2015 rules be reinstated. Commenter (34) asserted the definition for Elderly Preference Development appears to extend to any housing that has HUD or certain other federal funding, regardless of whether the developer's intent is to give a preference to the elderly. Commenter (34) requested clarification as to whether this was a correct interpretation and if not, requested the definition be appropriately modified.

STAFF RESPONSE: In response to the commenters, the definition for an elderly development was modified in response to HUD guidance published on July 21, 2015, clarifying how it treats certain age-restricted developments under the Fair Housing Act. The delineation between an Elderly Limitation development and an Elderly Preference development comes down to whether it qualifies for an exemption under the Housing for Older Persons Act ("HOPA") or not. A property receiving HUD funding as described in the HUD guidance and certain other types of federal assistance, is a development subject to an Elderly Preference and does not qualify for a HOPA exemption. These developments must lease to other populations, including in many cases elderly households with children, and must be developed and operated in a manner that will enable it to serve a reasonably foreseeable demand for households with children, including, but not limited to, making provision for such in developing its unit mix and amenities. A copy of the HUD guidance can be found in the Department's September 3, 2015, Board materials on its website. In response to commenter (34) the Department was making this clarification to comply with and not conflict with federal requirements. The matter of intent of the developer is best evidenced in the language of the agreements executed by the developer. Staff did not recommend any changes based on these comments.

BOARD RESPONSE: Accepted staff's recommendation.

2. §10.3 - Subchapter A - New Definition - Placed in Service (3), (34)

COMMENT SUMMARY: Commenter (3), (34) requested this new definition be added and that it be consistent with the Section 42 provision, which allows a building to be placed in service if only one unit in the building has received a certificate of occupancy. Commenter (3) requested the Department's carryover documentation be modified for consistency with federal regulation.

STAFF RESPONSE: In response to the commenters, creating this new definition would not constitute a logical outgrowth that would allow a reasonable opportunity for public comment prior to the adoption of this rule. Moreover, staff did not believe such definition is necessary at this time as the Department has always accepted the guidance provided in Revenue Rulings and IRS Form 8609 Instructions to allow at least one unit in a building to meet the placed in service requirement when necessary. The requirement in the Carryover for all units to be placed in service provides for the full 15-year term of the initial compliance period for affordability to serve the prospective tenants under the program. Considerations for units available for lease in the year following the placed in service year could require modifications and extensions to the affordability period(s) in the LURA. The language in the 2015 Carryover had been modified to reflect "The Owner hereby certifies that each building for which this allocation is made will be placed in service no later than December 31, 2017, and such placement in service shall meet the requirements of the Internal Revenue Service." Staff did not recommend any changes based on these comments.

BOARD RESPONSE: Accepted staff's recommendation.

3. §10.3 - Subchapter A - Definitions - Qualified Purchaser (22)

COMMENT SUMMARY: Commenter (22) indicated that the above referenced term is only used twice, both under §10.408 regarding qualified contracts and further expressed support for the definition and suggested it be used more consistently, especially in the ownership transfer section of Subchapter E.

STAFF RESPONSE: Commenter (22) did not provide recommended changes to the ownership transfer section of Subchapter E that incorporated use of the Qualified Purchaser term. Staff did not recommend any changes based on these comments.

BOARD RESPONSE: Accepted staff's recommendation.

4. §10.3 - Subchapter A - Definitions -Right of First Refusal (22)

COMMENT SUMMARY: Commenter (22) indicated that HB 3576, relating to entities that can acquire under the Right of First Refusal process has been expanded to include any entity permitted under §42(i)(7)(A) of the Code and any entity controlled by such a qualified entity. Commenter (22), on that basis, recommended use of the term "Qualified Entity" to be consistent with statute and that if such change is made then the reference under the above mentioned definition to a Qualified Nonprofit Organization or tenant organization should instead refer to Qualified Entity.

STAFF RESPONSE: Staff agreed with the modifications proposed by the commenter and made the changes accordingly to comply with the recently amended statute.

BOARD RESPONSE: Accepted staff's recommendation.

5. §10.3 - Subchapter A - Definitions -Reconstruction (32)

COMMENT SUMMARY: Commenter (32) encouraged the definition be modified to allow reconstruction of an equal number of units on a new site just as it has under the At-Risk set-aside in the QAP and also suggested that the undesirable site features and undesirable neighborhood characteristics would need to cite the developments that would not qualify.

STAFF RESPONSE: At-Risk developments have restrictions and/or funding that continues to be preserved with the redevel-

opment of the units. In instances where there are not existing restrictions the re-development of the units could still occur and be considered new construction for purposes of the rules and therefore any undesirable site features and/or undesirable neighborhood characteristics that may be applicable to the new site would still apply. Staff did not recommend any changes based on these comments.

BOARD RESPONSE: Accepted staff's recommendation.

6. §10.3 - Subchapter A - Definitions -Rural Area (7)

COMMENT SUMMARY: Commenter (7) requested clarification that USDA 515 projects originally built in qualified rural areas will continue to qualify as rural properties under the USDA set-aside for preservation purposes, provided the project retains the USDA 515, 514/516 funding.

STAFF RESPONSE: An existing USDA 515 development will be eligible for the USDA Set-Aside regardless of whether the area is designated as urban or rural. Staff noted that no changes were made to this definition other than a reference to the process by which a municipality can request a rural designation in response to the passage of H.B. 74 during the 84th legislative session. Staff did not recommend any changes based on these comments.

BOARD RESPONSE: Accepted staff's recommendation.

The Board approved the final order adopting the new sections on November 12, 2015.

INDEX OF COMMENTERS

(3) Texas Affiliation of Affordable Housing Providers,

(7) Rural Rental Housing Association of Texas,

(22) Cynthia Bast, Lock Lord,

(32) Texas Appleseed/Texas Low Income Housing Information Service,

(34) Barry Palmer, Coats Rose.

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

§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 March 1, 2016;

(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 formation of the ownership entity, 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. For Tax-Exempt Bond Developments it is the date the Application is submitted to the Department.

(8) Award Letter and Loan Term Sheet--A document that may be issued to an awardee of a Direct Loan before the issuance of a Commitment and/or Contract which preliminarily sets forth the terms and conditions under which the Direct Loan will be made available. An Award Letter and Loan Term Sheet will typically be contingent on the awardee satisfying certain requirements prior to executing a Commitment and/or Contract.

(9) Bank Trustee--A federally insured bank with the ability to exercise trust powers in the State of Texas.

(10) Bedroom--A portion of a Unit which is no less than 100 square feet; has no width or length less than 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) Commitment (also referred to as Contract)--A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants or other sources of funds or financial assistance from the Department will be made available.

(20) Commitment of Funds--Occurs after the Development is approved by the Board and once a Commitment or Award Letter and Loan Term Sheet is executed between the Department and Development Owner. For Direct Loan Programs, this process is distinct from "Committing to a specific local project" as defined in 24 CFR Part 92, which may occur when the activity is set up in the disbursement and information system established by HUD; known as the Integrated Disbursement and Information System (IDIS). The Department's commitment of funds may not align with commitments made by other financing parties.

(21) Committee--See *Executive Award and Review Advisory Committee.*

(22) 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.

(23) Competitive Housing Tax Credits ("HTC")--Tax credits available from the State Housing Credit Ceiling.

(24) 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.

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

(26) Contract--See *Commitment.*

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

(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) 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.

(31) Debt Coverage Ratio ("DCR")--Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." Calculated as Net Operating Income for any period divided by scheduled debt service required to be paid during the same period.

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

(33) Deobligated Funds--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and a Development Owner or Applicant.

(34) Determination Notice--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which specifies the Department's 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.

(35) 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.

(36) 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.

(37) Developer Services--A scope of work relating to the duties, activities and responsibilities for pre-development, development, design coordination, and construction oversight of the Property generally including but not limited to:

(A) site selection and purchase or lease contract negotiation;

(B) identifying and negotiating sources of construction and permanent financing, including financing provided by the Department;

(C) coordination and administration of activities, including the filing of applications to secure such financing;

(D) coordination and administration of governmental permits, and approvals required for construction and operation;

(E) selection and coordination of development consultants including architect(s), engineer(s), third-party report providers, attorneys, and other design or feasibility consultants;

(F) selection and coordination of the General Contractor and construction contract(s);

(G) construction oversight;

(H) other consultative services to and for the Owner;

(I) guaranties, financial or credit support if a Related Party; and

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

(38) Development--A residential rental housing project that consists of one or more buildings under common ownership and financed under a common plan which has applied for Department funds. This includes a project consisting of multiple buildings that are located on scattered sites and contain only rent restricted units. (§2306.6702)

(39) 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.

(40) Development Owner (also referred to as "Owner")--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department and is responsible for performing under the allocation and/or Commitment with the Department. (§2306.6702)

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

(42) Development Team--All Persons and Affiliates thereof that play a role in the development, construction, rehabilitation, management and/or continuing operation of the subject Development, including any Development Consultant and Guarantor.

(43) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program, 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.

(44) 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.

(45) 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.

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

(47) Elderly Development--A Development that is subject to an Elderly Limitation or a Development that is subject to an Elderly Preference.

(A) Elderly Limitation Development--A Development subject to an "elderly limitation" is a Development that meets the requirements of the Housing for Older Persons Act ("HOPA") under the

Fair Housing Act and receives no funding that requires leasing to persons other than the elderly (unless the funding is from a federal program for which the Secretary of HUD has confirmed that it may operate as a Development that meets the requirements of HOPA); or

(B) Elderly Preference Development--A property receiving HUD funding and certain other types of federal assistance is a Development subject to an "elderly preference." A Development subject to an Elderly Preference must lease to other populations, including in many cases elderly households with children. A property that is deemed to be a Development subject to an Elderly Preference must be developed and operated in a manner which will enable it to serve reasonable foreseeable demand for households with children, including, but not limited to, making provision for such in developing its unit mix and amenities.

(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 ("EARAC" 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 a certificate of formation for the partnership that is the Development Owner and that Controls the partnership. Where a limited liability corporation is the legal structure employed rather than a limited partnership, the manager or managing member of that limited liability corporation is deemed, for the purposes of these rules, to be the functional equivalent of a general partner.

(56) Governing Body--The elected or appointed body of public or tribal officials, responsible for the enactment, implementation, and enforcement of local rules and the implementation and enforcement of applicable laws for its respective jurisdiction.

(57) Governmental Entity--Includes federal, state or local agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts, tribal governments and other similar entities.

(58) Gross Capture Rate--Calculated as the Relevant Supply divided by the Gross Demand.

(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 (55) 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 manager or managing member of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.

(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--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 Develop-

ment is most likely to draw the majority of its prospective tenants or homebuyers.

(97) Primary Market Area ("PMA")--See *Primary Market.*

(98) Principal--Persons that will exercise Control (which includes voting board members pursuant to §10.3(a)(29) of this chapter) 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 Entity--Any entity permitted under §42(i)(7)(A) of the Code and any entity controlled by such qualified entity.

(106) 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.

(107) 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.

(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 ("ROFR")--An Agreement to provide a right to purchase the Property to a Qualified Entity 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)(A) of this chapter (relating to Required Documentation for Application Submission) or as requested in accordance with §10.204(5)(B).

(118) Secondary Market--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 ("SMA")--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 debt free or have no permanent foreclosable or noncash flow debt. 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). If the bonds are expected to be redeemed upon construction completion, placement in service or stabilization and no other permanent debt will remain, the Supportive Housing Development may be treated as Supportive Housing under Subchapter D of this chapter. 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) 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).

(127) Target Population--The designation of types of housing populations shall include Elderly Developments, and those that are entirely Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations. An existing Development that has been designated as a Development serving the general population may not change to become an Elderly Development without Board approval.

(128) 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.

(129) 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.

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

(134) 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.

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

(136) Uniform Multifamily Application Templates--The collection of sample resolutions and form letters, produced by the Department, as may be required under this chapter, Chapter 11 and Chapter 12 of this title that may be used, (but are not required to be used), to satisfy the requirements of the applicable rule.

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

(138) 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.

(139) 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.

(140) 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.

(141) 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.

(142) 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).

(143) 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.

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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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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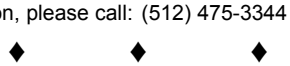
For further information, please call: (512) 475-3344



SUBCHAPTER B. SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS

10 TAC §10.101

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules Subchapter B §10.101, concerning Site and Development Requirements and Restrictions without changes to the proposed text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6404) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 25, 2015 and October 15, 2015. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 12, 2015.

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

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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10 TAC §10.101

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 10, Subchapter B, §10.101, concerning Site and Development Restrictions and Requirements, with changes to the proposed text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6405).

REASONED JUSTIFICATION. The Department finds that the adoption of the section will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 15, 2015, with comments received from (1) Foundation Communities, (3) Texas Affiliation of Affordable Housing Providers, (4) Alyssa Carpenter, (5) Palladium USA, (6) Chris Boone, City of Beaumont, (21) Structure Development, (22) Cynthia Bast, Locke Lord, (23) New Hope Housing, (24) Mary Henderson, (28) Arx Advantage, LLC, (30) Housing Lab by BETCO, (31) Marque Real Estate Consultants, (32) Texas Appleseed/Texas Low Income Housing Information Service, (34) Barry Palmer, Coats Rose, (36) Texas Coalition of Affordable Developers, (38) National Housing Trust, (43) Kim Schwimmer, (45) Pedcor Investments, (49) National Church Residences.

1. §10.101(a)(2) - Subchapter B - Mandatory Community Assets (3), (4), (5), (21), (22), (24), (28), (30), (43), (44), (45), (49)

COMMENT SUMMARY: Commenter (22) stated the new parenthetical under subparagraph (D) seemed odd, without meaningful purpose and suggested it be removed because some small retail establishments understandably require that minor children must be accompanied by an adult. Commenter (22) requested clarification for those assets listed under subparagraph (L), specifically, whether the community organization needed to have its own physical facility, like a meeting lodge or if the Kiwanis or Rotary Club meets at a local restaurant whether that would then qualify the application to receive points under both subparagraphs (F) and (L)? Commenter (22) requested clarification as to whether subparagraph (N) could include retail postal service establishments like a FedEx/Kinkos. Commenter (3), (4), (5), (24), (28), (30), (43), (44) requested that religious institutions be reinstated in the list of community assets not only because of the spiritual and emotional needs of its members, but because of the supportive public services they provide to the community including, day care, meals on wheels, counseling, food pantries, seminars on health and finances and emergency funds for items such as rent, utilities, medical expenses or car repairs. Commenter (4) requested dentistry medical offices, optometry medical offices and physician offices that are not general practice be reinstated to the list of community assets. Commenter (4) argued that the residents of HTC developments should be receiving regular dental and optometry care. Commenter (21) asserted that schools should count as an asset for elderly limitation developments because of the volunteer opportunities they provide, in addition to open space offered for recreation, fitness and social interaction; they are places to hold community meetings and even vote. Commenter (45), while they believed it was appropriate to remove proximity to a grocery store, pharmacy and urgent care facility as a threshold item, still believed it to be appropriate to single out certain amenities as being more important to tenants than others. Commenter (45) proposed the following modification to this section on that basis: "(2) Mandatory Community Assets. Development Sites must be located within an appropriate distance of community assets described in subparagraph (B) of this paragraph to qualify for at least the minimum number of points required in accordance with clauses (i) - (iii) of this subparagraph. Only one community asset of each type listed will count towards the number of assets required. These do not need to be in separate facilities to be considered for points. 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 be under active construction, post pad *(e.g.* framing the structure) by the date the Application is submitted: New Construction in an Urban Area must qualify for eight (8) points; New Construction in a Rural Area must qualify for six (6) points; Rehabilitation Development (in either Urban or Rural areas) must qualify for five (5) points. (B) The community assets 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 or in an Urban or Rural area. (i) within one mile of full service grocery store (3 points); (ii) within two miles of a full service grocery store (2 points); (iii) For Applications proposing to serve the General Population, within three miles of a full service grocery store (1 point); (iv) within one mile of a pharmacy (3 points); (v) within two miles of a pharmacy (2 points); (vi) within three miles of a pharmacy (1 point); (vii) within one mile of an urgent care facility (3 points); (viii) within two miles of an urgent care facility (2 points); (ix) within three miles of an urgent care facility (1 point); (x) for Applications in a Rural Area, within two miles of a public school (1 point); (xi) for Applications proposing to serve the General population, within 1/2 mile of a public school (2 points); (xii) within one mile of a public school (1 point); (xiii) for Applications proposing to

be an Elderly Development, within one mile of a senior center accessible to the general public (2 points); (xiv) within 1/2 mile of a 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 does not meet this requirement. However, accessible transportation provided at no cost to the tenant when the Property Management Office is open, such as cab vouchers or a specialized van on-site, to a bus or other public transit stop, does qualify (1 point); (xv) For Applications in an Urban Area, within one mile, and for Applications in a Rural Area, within two miles of any of the community assets listed in subclauses (I) - (XIV) of this clause (1 point): (I) convenience store/mini-market; (II) department or retail merchandise store; (III) bank/credit union; (IV) restaurant (including fast food, but not including establishments that are primarily bars and serve food as an incidental item); (V) indoor public recreation facilities, such as, community centers and libraries accessible to the general public; (VI) outdoor public recreation facilities such as parks, golf courses, and swimming pools accessible to the general public; (VII) medical offices (physician, dentistry, optometry) or hospital/medical clinic; (VIII) religious institutions; (IX) community, civic or service organizations, such as Kiwanis or Rotary Club; (X) post office; (XI) city hall; (XII) county courthouse; (XIII) fire station; or (XIV) police station.

STAFF RESPONSE: In response to commenter (22) staff modified option (D) to provide additional clarification on types of retail that would not be appropriate under this item. With respect to community, civic or service organizations that hold their meetings at a restaurant, staff noted that the opening paragraph of this section states that the assets do not need to be in separate facilities to be considered for points; therefore, this could conceivably count for points under (F) and (L). However, in holding meetings at a restaurant the organization would need to have some regular and/or permanent presence there in the form of signage reflecting the regular meeting times, a lease, or other appropriate documentation that reflects a regular presence. Staff did not believe that a FedEx or Kinkos would qualify for points as a post office; however, could technically be considered retail. In response to commenters (3), (4), (5), (24), (28), (30), (43), (44), staff believed that this could be incorporated into an existing community asset and modified the item accordingly: "(L) community, civic or service organizations that provide regular and reoccurring services available to the entire community (this could include religious organizations or organizations like a Kiwanis or Rotary Club);" In response to commenter (4) staff included dentist and optometrist under the medical office option. In response to commenter (21) staff agreed that services provided at public schools could be considered a community asset, regardless of the population served, and modified this option accordingly. In response to commenter (45), staff appreciated the suggested modification by which various community assets may be considered. Staff believed that the proposed rule more closely follows the policies and priorities of the Board than the commenter's proposed changes, and that the extent of the nature and scope of commenters proposed changes would require renewing the rule-making process and re-publication prior to adoption.

BOARD RESPONSE: Accepted staff's recommendation.

2. §10.101(a)(3) - Subchapter B - Undesirable Site Features (4), (6), (32)

COMMENT SUMMARY: Commenter (32) indicated that the distances between a site and the undesirable land uses relating to junkyards, heavy industrial and landfills are inadequate to protect tenants from harm and further asserted that the potential harm from these site uses is far greater than that of a sexually-oriented business, yet all need to be more than 300 ft from the development site. Moreover, commenter (32) stated that the 500 ft distance to a manufacturing or fuel storage facility is unacceptably small considering a fuel tank explosion would impact an area much larger and airborne emissions from manufacturing plants would also spread beyond the 500 ft radius. Commenter (32) expressed concern regarding the reduction in distance between a development site and an active railroad track to 100 feet considering that a commuter train derailment has the potential to cause damage well beyond this. Commenter (32) believed that trains carrying hazardous materials present an even greater risk, including crude oil, and the risk of oil spills. Commenter (4) argued that the modification to subparagraph (D) regarding "capable of refining" makes the item further reaching and requested clarification as to why the 2 mile limitation was chosen and for what purpose because it redlines significant portions of places, such as Texas City and La Marque for no apparent reason. Commenter (4) further asserted that if the concern was explosion risk, then a more appropriate solution would be to require HUD blast zone calculations and recommended the following modification: "(D) Development Sites located within 2 miles of potentially hazardous uses such as nuclear plants or refineries capable of refining more than 100,000 barrels of oil daily unless the Applicant provides evidence of HUD blast zone calculations based on the distance to refinery features and is located outside such blast zone and/or has proposed appropriate remediation;" Similarly, commenter (6) expressed concern over the limitation in subparagraph (D) and requested the distance be modified from 2 miles to 1.5 miles considering the extent of the petro-chemical and industrial base of the economy and that if not changed it would preclude much of their downtown from being re-developed.

STAFF RESPONSE: In response to commenter (32) regarding distances to certain undesirable site features relative to others, concerns were raised; however, no specific or supported alternative distances were recommended. In evaluating these comments in conjunction with those from commenter (4), (6) staff believed there can be changes to this section that defer to regulations already in place, appropriate distances relative to housing and appropriate mitigation as may be applicable in the future.

BOARD RESPONSE: Accepted staff's recommendation.

3. §10.101(a)(4) - Subchapter B - Undesirable Neighborhood Characteristics (1), (3), (21), (22), (23), (30), (31), (32), (34), (35), (49), (51)

COMMENT SUMMARY: Commenter (1), (23), (49), (51) expressed concern over the use of neighborhoodscout.com by which to base policy decisions considering its proprietary software and therefore unknown as to how it collects, analyzes and reports data across a city. Because of concerns over inaccurate data commenter (1), (23), (34), (49), (51) requested the Department not rely on use of this website for its multifamily programs and commenter (23) further indicated that the subscription service is costly at $40/month. Commenter (34) requested the language used in with respect to crime in the 2015 rules be used instead because it at least provided alternatives that could be used to counter that of neighborhoodscout.com. Commenter (3), (23) suggested that because neighborhoodscout.com provides inconsistent results, applicants should have the option of obtaining statistics directly from the police department and only in instances where such statistics are difficult then neighbor-

hoodscout.com can be used. Commenter (3), (23), (35), (49) recommended the following modification: "(ii) The Development Site is located in an Urban Area and the rate of violent crimes for the police beat as reported by the local police department is greater than 18 per 1,000 persons (annually) or as reported on neighborhoodscout.com." Commenter (21) offered similar recommended language:"(ii) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com or other local-data source such as precinct reports." Commenter (3), (31), (34) recommended section (iii) regarding blighted structures be deleted on the basis that the concept of blight is too subjective to administer in a consistent way. Commenter (31), (34) further noted that this criteria may result in the ineligibility of sites in high opportunity areas or revitalization areas that are rapidly improving simply due to the presence of a de minimis number of blighted structures. Commenter (35) also requested the blight restriction be removed on the basis that bad housing conditions are a reason to invest in an area and that the Legislature affirmed that as a priority of the state through creation of the At-Risk set-aside. Commenter (35) further asserted that consistent with the Supreme Court decision, the Department may make awards in neighborhoods when there is a valid governmental interest for those allocation decisions and that ameliorating blight and bad housing conditions is a valid, and perhaps the best, according to commenter (35), justifications for investing in a neighborhood.

Commenter (3), (30), (31), (34), (49), (51) suggested section (iv) regarding schools that have not Met Standard be deleted on the basis that certain school districts in larger urban areas struggle to meet the new standards because they are indeed new standards. Commenter (3), (31), (34) further asserted that while the inference of undesirable neighborhood characteristics is rebuttable, this rule will cause additional administrative burden both for the program participants and the program staff. Commenter (30) inquired as to what actions, documentation and timelines would be acceptable submissions by the applicant to mitigate schools that do not have the Met Standard rating and provided as an example, if TEA and/or the school in question shared what their plan of action is bringing the rating up to Met Standard and it will take five years to accomplish most of the outlined actions in the plan, would that be acceptable to resolve the issue, or whether the mitigation plan have to resolve all issues by the Placed in Service date. Commenter (23), (49), (51) similarly requested that schools that do not achieve the Met Standard rating be removed, or at least take into account supportive housing developments that only lease to adults, who have no children with need or use for higher performing schools. Commenter (23) requested the following modification: "(iv) The Development Site is located within the attendance zones of an elementary school, a middle school and a high school that does not have a Met Standard rating by the Texas Education Agency.... Development Sites subject to an Elderly Limitation or Supportive Housing are considered exempt and do not have to disclose the presence of this characteristic." Commenter (49), (51) recommended that, at a minimum, the elderly exclusion should be for all elderly developments not just "limitation" as all elderly developments are designed and intend to serve elderly who do not use primary schools. Commenter (3) asserted that large cities will not legally be able to provide letters stating the development is necessary in order to comply with their fair housing obligations on the basis that the statement is too broad and too open to legal interpretation. Cities will be more comfortable, according to commenter (3), with confirming compliance with their planning documents; therefore, commenter (3) and similarly commenter (35) recommended the following modification: "(iii) The Development is consistent with fair housing planning documents, such as an Analysis of Impediments or Assessment of Fair Housing, and with planning documents such as the city's or county's HUD consolidated plan." Commenter (35) further asserted they disagree with the use of undesirable neighborhood characteristics as a proxy for race in the QAP and that instead of disqualifying areas because of racial demographics, the approach toward fair housing seems to substitute a proxy for racial concentration such as high crime or blight. Moreover, according to commenter (35) the disqualification of neighborhoods based on race, or based on a proxy for racial concentration is only fair if there are broad exceptions. Commenter (35) added that HUD site and neighborhood standards have always recognized broad exceptions for economically revitalizing areas and rehabilitation developments and suggested the Department broaden its exception to allow a site that is consistent with fair housing obligations. Commenter (35) expressed support for the modification as proposed by commenter (3). Commenter (34) recommended the following modification so that there is no implication that Fair Housing goals may only be achieved with the development in question. "(iii) The Development enables the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order." Commenter (22) recommended the following modification on the basis that staff's recommendation could be eligibility, ineligibility or even neutral and as a result the proposed language could add confusion. "Should the Board make a determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is not subject to appeal." Commenter (32) expressed support regarding evidence of mitigation of undesirable neighborhood characteristics that must include timelines and the expectation that the issues being addressed will be resolved or significantly improved by the time the development is placed into service.

STAFF RESPONSE: In response to commenters (1), (3), (21), (23), (34), (35), (49), (51) staff believed it is important for applicants to perform an initial evaluation of their sites with respect to crime and this rule encourages that evaluation. Staff also wanted to provide a universal benchmark by which such evaluation can be performed recognizing that how local police departments report crime differs from city to city. If, based on results from Neighborhoodscout.com, disclosure is necessary then the rule provides additional flexibility in the data source or other information that can be used as mitigation, including police beat data as suggested by the commenters. The crime rate threshold does not result in an application being ineligible but merely triggers a more substantive review of relevant information concerning the neighborhood. In response to specific comments by commenter (35) who expressed disagreement with the use of undesirable neighborhood characteristics as a proxy for race in the QAP, staff disagreed on the basis that the undesirable neighborhood characteristics may not have anything to do with the racial composition of the residents in the area but has to do more with concerns with safety and well-being as it relates to the location of affordable housing. In response to commenter (3), (31), (34) who recommended section (iii) regarding blighted structures be deleted on the basis that the concept of blight is too subjective to administer in a consistent way, staff disagreed and believed such determinations can be and have successfully been made by the Board. Maintaining this requirement will further ensure

that the surrounding land uses are fully contemplated by the developer prior to making an application. As it relates to the basis by which a site can be found eligible by the Board in response to commenter (3), the justification for the recommended change is based on cities not legally being able to provide such letters; however, the Department does not know this to be true. Moreover, what a city will or will not be comfortable in confirming with respect to affirmatively furthering fair housing may very well have to do with the location of the site itself. Staff noted that providing such a letter is not a threshold requirement in general, but one of three elements by which the Board has to consider, should staff recommend that a site be found ineligible. In response to commenter (34) staff disagreed and believed that the location of the development is important in an assessment to affirmatively further fair housing. While staff recommended no other changes based on these aforementioned comments, staff clarified this section to indicate that such information would need to be provided by the Applicant. In response to commenters (3), (30), (31), (34), (49) and (51) staff believed developments located in areas where the schools that would reasonably be attended by the tenants is worthy of consideration. Staff noted that based on the 2015 Accountability Ratings released by TEA 94% of school districts achieved the Met Standard rating and 86% of elementary, middle and high schools achieved the Met Standard rating. Based on these high percentages and in response to commenter (3), (31), (34), staff did not believe the disclosure and assessment required will create any more additional administrative burden than any of the other undesirable neighborhood characteristics. In response to commenter (30) staff modified the rule to reflect the following: "Possible mitigation for areas where the schools have not achieved the Met Standard rating could include, but is not limited to, a letter from the Superintendent or member of the school board identifying the efforts it has undertaken to increase student performance, including benchmarks for re-evaluation, any local efforts that may be underway (including plans for school expansion or new schools built to alleviate over-crowding), and long-term trends that would point toward their achieving the Met Standard rating by the time the Development places in service. In general, mitigation of any of the undesirable neighborhood characteristics must also include timelines that evidence that efforts are already underway and a reasonable expectation that the issue(s) being addressed will be resolved or significantly improved by the time the proposed Development is placed in service." In response to commenters (23), (49) and (51) requesting supportive housing developments to be exempt from the Met Standard requirement, there is no TDHCA restriction on children living in a supportive housing development and, therefore, staff believed that such developments should be held to the same standard considering a tenant with a child may request to lease at a supportive housing development. Similarly, in response to commenter (49) and (51), those with an elderly preference will be required, based on HUD guidance, to operate the development in a manner that will enable it to serve a reasonably foreseeable demand for households with children. As a result, staff believed the Met Standard rating of the schools to be important. In response to commenter (22), staff agreed with the recommended change regarding Board determination of ineligibility. Staff appreciated the support expressed by commenter (32).

BOARD RESPONSE: Accepted staff's recommendation.

3. §10.101(b)(4) - Subchapter B - Mandatory Development Amenities (3), (21), (31), (36), (49)

COMMENT SUMMARY: Commenter (3), (21), (31), (36) requested that central air not be required for acquisition/rehabilitation developments where the units currently operate with PTACs and further stated that modern PTAC units are energy and cost efficient and older existing buildings typically do not have the plate height to allow for both central air and reasonable ceiling height. Commenter (3), (21), (31), (36) proposed the following modification: "(L) All Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units and for all units in Rehabilitation properties where the units were heated and cooled with Packaged Terminal Air Conditioners prior to the Rehabilitation); and.." Commenter (49) suggested a similar modification noting efficiency and one-bedroom units and also recommended a PTAC with an EER 11.5 rating. Commenter (49) further noted that the cost to replace a PTAC system with central air is cost prohibitive in an existing project and PTACs are much less expensive as it relates to long-term maintenance costs. Moreover, the cost per square foot scoring item restricts the amount of hard costs which makes it difficult to add the central air requirement into the budget and still remain competitive. Commenter (49) recommended the following changes: "(L) All Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO, Efficiency Units and Rehabilitation developments consisting of efficiency and one bedroom units that currently have PTAC's only); and"

STAFF RESPONSE: In response to commenters (3), (21), (31), (36), (49) staff believed that the general high caliber of rehabilitation expected by the Department requires that central air conditioning remain a requirement for rehabilitation developments; however, should the Board choose to offer some relief to Applicant's proposing rehabilitation, staff believed that mini-split systems could be an appropriate alternative. Mini-split systems are generally superior to traditional PTAC units. In addition to being much more efficient, they also offer quieter operation. As advances are made in PTAC units and where there is a demonstrated structural need, the Board may still approve a waiver on a case-by-case basis. Staff did not recommend any changes based on these comments.

BOARD RESPONSE: Accepted staff's recommendation.

4. §10.101(b)(5) - Subchapter B - Common Amenities (3), (28), (30), (31), (38), (45)

COMMENT SUMMARY: Commenter (3), (28), (30), (31) stated that extending obligations associated with providing common amenities past the compliance period is inconsistent with the Department's current policy of confirming compliance during the compliance period and that extending this type of compliance through the Extended Use Period will create further administrative burden, both for program participants and Department staff. Commenter (3), (28), (30), (31) requested the timeframe through the Compliance Period be restored. Commenter (38) expressed support for the green building threshold points and also encouraged the Department to partner with Texas' utilities to make energy-efficiency programs more accessible to affordable, multifamily developments. Commenter (45) believed that if tenants in a second phase of a development are able to enjoy the benefits of an amenity built in the first phase then the amenity should count for points in the second phase. Commenter (45) asserted that building an additional amenity in some cases is an inefficient use of federal resources and further expressed that any concerns over eligible basis can be

resolved at cost certification. Commenter (45) recommended the following modification to this section: "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, which includes those amenities required under subparagraph (C)(xxxi) of this paragraph. If scattered site with fewer than 41 Units per site, at a minimum at least some of the amenities required under subparagraph (C)(xxxi) of this paragraph must be distributed proportionately across all sites. In the case of additional phases of a Development any amenities that are anticipated to be shared with the first phase development can be claimed for purposes of meeting this requirement for the second phase, as long as that amenity still meets any requirements with respect to its size, or where appropriate, the number of amenities required per unit. All amenities must be accessible and must be available to all units via an accessible route."

STAFF RESPONSE: In response to commenters (3), (28), (30), (31) regarding the change in terminology from compliance period to extended use period, staff noted that the change was to align with actual practice from a monitoring perspective. Staff believed that the more appropriate term to use is the Affordability Period which addresses the affordability requirements specific to the program applied under and has made the change accordingly. While the rule allows for an owner to replace amenities while keeping the overall point value the same, most of the common amenities are permanent features to the property *(e.g.* perimeter fencing, swimming pool, etc.) and would presumably remain throughout the life of the property and benefit future tenants. Moreover, because the common amenities are capitalized costs with the same depreciation periods as the units themselves as evidence of their inclusion in eligible basis they should be maintained throughout the Affordability Period. Staff further researched commenters claims that this is a change in policy and confirmed that an inconsistency in the policy first occurred during the 2013 revamping of the QAP where the "Compliance Period" was first specified in the new Subchapter B; however, this was inconsistent with the executed LURA's and compliance monitoring requirements. Accordingly, the proposed rule is in accord with the Department's policy on this issue, as has been historically expressed through its LURA's. Staff appreciated the support expressed by commenter (38). In response to commenter (45) the size of a development's amenities for a first phase should stand on their own and should not anticipate an over-sizing to support a second phase because the second phase may never come to fruition. Moreover, parsing the eligible basis for an oversized pool or community building, for example, would unnecessarily complicate the calculation of eligible basis for both phases. Staff recommended no changes based on these comments.

BOARD RESPONSE: Accepted staff's recommendation.

5. §10.101(b)(6) - Subchapter B - Unit Requirements (3), (28), (30), (31)

COMMENT SUMMARY: Commenter (3), (28), (31) stated that extending obligations associated with unit requirements past the compliance period is inconsistent with the Department's current policy of confirming compliance during the compliance period and that extending this type of compliance through the Extended Use Period will create further administrative burden, both for program participants and Department staff. Commenter (3), (28), (31) requested the timeframe through the Compliance Period be restored.

STAFF RESPONSE: In response to commenters (3), (28), (30), (31) regarding the change in terminology from compliance period to extended use period, staff noted that the change was to align with actual practice from a monitoring perspective. Staff believed that the more appropriate term to use is the Affordability Period which addresses the affordability requirements specific to the program applied under and has made the change accordingly. While the rule allows for an owner to replace amenities while keeping the overall point value the same, many of the unit amenities are permanent features to the property *(e.g.* storage room, covered patios/balconies, nine foot ceilings, etc.) and would presumably remain throughout the life of the property and benefit future tenants. Moreover, because the amenities are capitalized costs with the same depreciation periods as the units themselves as evidence of their inclusion in eligible basis they should be maintained throughout the Affordability Period. Staff further researched commenters claims that this is a change in policy and confirmed that an inconsistency in the policy first occurred during the 2013 revamping of the QAP where the "Compliance Period" was first specified in the new Subchapter B; however, this was inconsistent with the executed LURA's and compliance monitoring requirements. Accordingly, the proposed rule is in accord with the Department's policy on this issue, as has been historically expressed through its LURA's. Staff recommended no changes based on these comments.

BOARD RESPONSE: Accepted staff's recommendation.

6. §10.101(b)(7) - Subchapter B - Tenant Supportive Services (1), (3), (28), (30), (31), (49)

COMMENT SUMMARY: Commenter (3), (28), (31) stated that extending obligations associated with providing supportive services past the compliance period is inconsistent with the Department's current policy of confirming compliance during the compliance period and that extending this type of compliance through the Extended Use Period will create further administrative burden, both for program participants and Department staff. Commenter (3), (28), (31) requested the timeframe through the Compliance Period be restored. Commenter (49) recommended that item (X) be modified for consistency with the Aging in Place scoring item so that smaller developments can effectively implement this expensive, yet extremely important service. "(X) An on-site resident services coordinator at the Development that works a minimum of 16 hours per week for developments of 80 units or less and a minimum of 32 hours for developments 81 units or more (2 points);" Commenter (1) expressed opposition to subparagraph (Z), relating to proximity to facilities for treatment of alcohol dependency, PTSD, therapeutic and rehabilitative services, and medical and/or psychological services being utilized for all developments on the basis that not all developments engage or refer their residents to their use. Commenter (1) asserted that this is ultimately a free point for developments instead of forcing them to choose from the menu of services that actually require participation in order to get the points and further suggested that this item was originally included as specific to supportive housing and should be called out for supportive housing exclusively.

STAFF RESPONSE: In response to commenters (3), (28), (30), (31) regarding the change in terminology from compliance period to extended use period, staff believed that the more appropriate term to use is the Affordability Period which addresses the affordability requirements specific to the program applied under

and has made the change accordingly. Staff further researched commenters claims that this is a change in policy and confirmed that an inconsistency in the policy first occurred during the 2013 revamping of the QAP where the "Compliance Period" was first specified in the new Subchapter B; however, this was inconsistent with the executed LURA's and compliance monitoring requirements. Accordingly, the proposed rule is in accord with the Department's policy on this issue, as has been historically expressed through its LURA's. In response to commenter (49) staff believed that allowing a development to claim points for the supportive service requirement that they are already receiving points for under a scoring item could effectively water-down the overall number of supportive services required. Moreover, making the change suggested by the commenter could affect the ability of a non-competitive HTC application to claim points for this service by making it more restrictive. It would also be impractical for staff to independently verify compliance with the total number of hours worked and even if it could be monitored, any finding of less than the required hours would be considered an uncorrectable finding of noncompliance. In response to commenter (1) staff disagreed that general population or elderly development residents would not benefit from proximity to a facility that offers therapeutic or rehabilitative services, treatment for alcohol dependency or psychological services. Staff clarified this item to reflect that, regardless of population served, if the development has a referral process and provides transportation to and from the facility they would qualify for the points. Staff recommended no changes based on these comments.

BOARD RESPONSE: Accepted staff's recommendation.

The Board approved the final order adopting the new sections on November 12, 2015.

INDEX OF COMMENTERS

(1) Foundation Communities,

(3) Texas Affiliation of Affordable Housing Providers,

(4) Alyssa Carpenter,

(5) Palladium USA,

(6) Chris Boone, City of Beaumont,

(21) Structure Development,

(22) Cynthia Bast, Locke Lord,

(23) New Hope Housing,

(24) Mary Henderson,

(28) Arx Advantage, LLC,

(30) Housing Lab by BETCO,

(31) Marque Real Estate Consultants,

(32) Texas Appleseed/Texas Low Income Housing Information Service,

(34) Barry Palmer, Coats Rose,

(36) Texas Coalition of Affordable Developers,

(38) National Housing Trust,

(43) Kim Schwimmer,

(45) Pedcor Investments,

(49) National Church Residences.

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

§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. 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. The Applicant will have to use floodplain maps and comply with regulation as they exist at the time of commencement of construction. Even if not required by such provisions, the Site must be developed so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain. If there are more stringent 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 Rehabilitation (excluding Reconstruction) Developments will be allowed in the one-hundred (100) year floodplain provided the local government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application or the existing structures meet the requirements that are applicable for New Construction or Reconstruction Developments, as certified to by a Third Party engineer.

(2) Mandatory Community Assets. Development Sites must be located within a one mile radius (two-mile radius for Developments located in a Rural Area), unless otherwise required by the specific asset as noted below, of at least six (6) community assets listed in subparagraphs (A) - (S) of this paragraph. Supportive Housing Developments located in an Urban Area must meet the requirement in subparagraph (S) of this paragraph. Only one community asset of each type listed will count towards the number of assets required. These do not need to be in separate facilities to be considered for points. 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 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 (excluding liquor stores, smoke shops and what could otherwise be considered adult-oriented businesses);

(E) federally insured depository institution;

(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 accessible to the general public, such as, community centers, libraries, fitness club/gym, and senior centers;

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

(I) medical office of a general practitioner, dentist, optometrist, urgent care facility or hospital;

(J) public schools;

(K) campus of an accredited higher education institution;

(L) community, civic or service organizations that provide regular and reoccurring services available to the entire community (this could include religious organizations or organizations like a Kiwanis or Rotary Club);

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

(N) post office;

(O) city hall;

(P) county courthouse;

(Q) fire station;

(R) police station;

(S) Development Site is located within 1/2 mile, connected by an accessible route, of a 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 does not meet this requirement.

(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, USDA, or Veterans Affairs ("VA") 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 stating the Rehabilitation of the existing units is consistent with achieving at least one or more of the stated goals as outlined in the State of Texas Analysis of Impediments to Fair Housing Choice or, if within the boundaries of a participating jurisdiction or entitlement community, as outlined in the local analysis of impediments to fair housing choice. 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. For purposes of this paragraph, a junkyard shall be defined as stated in Transportation Code, §396.001;

(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 (excluding gas stations), refinery blast zones, etc.;

(D) Development Sites located within 2 miles of potentially hazardous uses such as nuclear plants or refineries capable of refining more than 100,000 barrels of oil daily;

(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; 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. Alternatively, 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). 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 with a recommendation with respect to the eligibility of the Development Site. Factors to be considered by the Board, despite the existence of the undesirable neighborhood characteristics are identified in subparagraph (E) of this paragraph. Should the Board make a determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is not subject to appeal.

(B) The existence of any one of the five undesirable neighborhood characteristics in clauses (i) - (v) 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 40 percent for individuals (or 55 percent for Developments in regions 11 and 13).

(ii) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(iii) The Development Site is located within 1,000 feet of multiple vacant structures visible from the street, which have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.

(iv) The Development Site is located within the attendance zones of an elementary school, a middle school and a high school that does not have a Met Standard rating by the Texas Education Agency. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. The applicable school rating will be the 2015 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. Development Sites subject to an Elderly Limitation is considered exempt and does not have to disclose the presence of this characteristic.

(v) 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");

(III) RCRA Generators/Handlers of hazardous waste; or

(IV) State voluntary cleanup program.

(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) - (vi) of this paragraph.

(i) A determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;

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

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

(iv) 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;

(v) An assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located; and

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

(D) Information regarding mitigation of undesirable neighborhood characteristics should be relevant to the undesirable characteristics that are present in the neighborhood. For example, a plan to clean up an environmental hazard is an appropriate response to disclosure of a facility listed in the Environmental Site Assessment. With respect to crime, such information may include, but is not limited to, crime statistics evidencing trends that crime rates are materially and consistently decreasing, violent crime data based on the police beat within which the Development Site is located for the city's police department, or violent crimes within a one half mile radius of the Development Site. The data used must include incidents recorded during the entire 2014 and 2015 calendar year. A written statement from the local police department, information identifying efforts by the local police department addressing issues of crime, or documentation indicating that the high level of criminal activity is concentrated at the Development Site, which presumably would be remediated by the planned Development, may also be used to document compliance with this provision. Other mitigation efforts to address undesirable characteristics may include new construction in the area already underway that evidences public and/or private investment, and to the extent blight or abandonment is present, acceptable mitigation would go beyond the securement or razing and require the completion of a desirable permanent use of the site(s) on which the blight or abandonment is present such as new or rehabilitated housing, new business, development and completion of dedicated municipal or county-owned park space. Possible mitigation for areas where the schools have not achieved the Met Standard rating could include, but is not limited to, a letter from the Superintendent or member of the school board identifying the efforts it has undertaken to increase student performance, including benchmarks for re-evaluation, any local efforts that may be underway (including plans for school expansion or new schools built to alleviate over-crowding), and long-term trends that would point toward their achieving the Met Standard rating by the time the Development places in service. In general, mitigation of any of the undesirable neighborhood characteristics must also include timelines that evidence that efforts are already underway and a rea-

sonable expectation that the issue(s) being addressed will be resolved or significantly improved by the time the proposed Development is placed in service.

(E) 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;

(ii) Factual determination that the undesirable characteristic that has been disclosed are not of such a nature or severity that they should render the Development Site ineligible based on mitigation efforts as established under subparagraph (D) of this paragraph; or

(iii) The Development is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order, as such documentation is provided by the Applicant as part of the disclosure.

(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 Elderly Developments.

(i) Any 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 Elderly Development with any Units having more than two bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, and/or security officer. These employee Units must be specifically designated as such; or

(iii) Any Elderly Development (including Elderly in a Rural Area) proposing more than 70 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, based on the placed in service date, 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, based on the placed in service date, 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 Catastrophe 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. All amenities listed below must be at no charge to the tenants. Tenants must be provided written notice of the applicable required amenities for the Development.

(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 must meet performance standards of Texas Health and Safety Code, Chapter 372;

(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- Elderly Developments and one (1) space per Unit for 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 Affordability 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, which includes those amenities required under subparagraph (C)(xxxi) of this paragraph. If scattered site with fewer than 41 Units per site, at a minimum at least some of the amenities required under subparagraph (C)(xxxi) of this paragraph must be distributed proportionately across all sites. In the case of additional phases of a Development any amenities that are anticipated to be shared with the first phase development cannot be claimed for purposes of meeting this requirement for the second phase. The second phase must include enough points to meet this requirement that are provided on the Development Site. For example, if a swimming pool exists on the phase one property and it is anticipated that the second phase tenants will be allowed it use it, the swimming pool cannot be claimed for points for purposes of this requirement for the second phase Development. All amenities must be accessible and must be available to all units via an accessible route.

(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 40 Units loaded with basic programs (maximum of 5 computers needed), 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; or 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, seven days a week monitored camera/security system in each building (3 points);

(xxix) Bicycle parking within reasonable proximity to each residential building that allows for bicycles to be secured with lock (lock not required to be provided to tenant) (1 point);

(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 ICC 700 National Green Building Standard. 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 twenty-two (22) items listed under items (-a-) - (-v-) 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. For Rehabilitation Developments this would be applicable to new landscaping planned as part of the scope of work;

(-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 for electric and water. 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;

(-m-) locate water fixtures within 20 feet of hot water heater;

(-n-) drip irrigate at non-turf areas;

(-o-) radiant barrier decking for New Construction Developments or "cool" roofing materials;

(-p-) permanent shading devices for windows with solar orientation;

(-q-) Energy-Star certified insulation products;

(-r-) full cavity spray foam insulation in walls;

(-s-) Energy-Star rated windows;

(-t-) FloorScore certified flooring;

(-u-) sprinkler system with rain sensors;

(-v-) NAUF (No Added Urea Formaldehyde) cabinets.

(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) ICC 700 National Green Building Standard (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 Affordability 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);

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

(xiv) Thirty (30) year shingle or metal roofing (0.5 point); and

(xv) Greater than 30 percent stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points).

(7) Tenant Supportive Services. The supportive services include those listed in subparagraphs (A) - (Z) 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 Affordability Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. The services provided should be those that will directly benefit the Target Population of the Development. 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, there must be adequate space for the intended services and services offered should be accessible to all *(e.g.* exercises classes must be offered in a manner that would enable a person with a disability to participate). Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. All of these services must be provided by a person on the premises.

(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, bullying, 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) (2 points);

(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 provided by a health care professional(1 point);

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

(J) organized youth programs or other recreational activities such as games, movies or crafts 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 (offered at times when most residents would be likely to attend) (2 points);

(N) twice monthly arts, crafts, and other recreational activities *(e.g.* 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 by a qualified Owner or Developer or 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 Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(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 substance abuse meetings at the Development Site (2 points);

(W) contracted onsite occupational or physical therapy services for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

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

(Y) a resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water (1 point);and

(Z) Development Sites located within a one mile radius of one of the following can also qualify for one (1) point provided they also have a referral process in place and provide transportation to and from the facility:

(i) Facility for treatment of alcohol and/or drug dependency;

(ii) Facility for treatment of PTSD and other significant psychiatric or psychological conditions;

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

(iv) Facility providing medical and/or psychological and/or psychiatric assistance for persons of limited financial means.

(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). (§§2306.6722; 2306.6730)

(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, 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 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 December 17, 2015.

TRD-201505712
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 6, 2016
Proposal publication date: September 25, 2015
For further information, please call: (512) 475-3344

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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

The Texas Department of Housing and Community Affairs (the "Department") adopts 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 without changes to the proposed text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6413) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Board approved the final order adopting the repeal on November 12, 2015.

The Department accepted public comments between September 25, 2015 and October 15, 2015. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the repeal.

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

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 December 17, 2015.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: September 25, 2015
For further information, please call: (512) 475-3344

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10 TAC §§10.201 - 10.207

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 10, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications. Sections 10.204, 10.205 and 10.207 are adopted with changes to the text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6414). Sections 10.201 - 10.203 and 10.206 are adopted without changes and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the rule will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the Draft Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 15, 2015, with comments received from (3) Texas Affiliation of Affordable Housing, (19) R.L. "Bobby" Bowling IV, (21) Structure Development, (22) Cynthia Bast, Locke Lord, (37) Terri Anderson, (45) Pedcor Investments.

1. Subchapter C - General Comment (22)

COMMENT SUMMARY: Commenter (22) noted that throughout the Rules, the Department has various ways of referring to Persons involved with an Application - i.e. Applicant, Affiliate, Principal and Development Team and further stated that sometimes their usage creates unintended burdens or infeasibility for Applicants where the goal should be uniformity and consistency. Commenter (22) asserted that the organizational charts need to be the hub of the wheel hosting the various spokes (ineligibility, previous participation, etc.). Commenter (22) further explained the certain kinds of organizations such as nonprofit organizations, governmental bodies and public corporations require different treatment because control and governance of these entities is so different than private, closely-held organizations. Non-profits, governmental bodies and public corporations are not generally run by those who own the entity or serve on the board but rather they are operated on a day-to-day basis by a few officers and/or employees. According to commenter (22), there have been instances where board members of non-profits, governmental bodies and public companies are uncomfortable with signing certifications required in the application, with some even resigning their role on the board, because they go beyond an individual's personal knowledge. Commenter

(22) believed more improvement is needed with respect to these certifications and with the usage of various Persons involved with an Application.

STAFF RESPONSE: Staff partially agreed that these non-substantive clarifications may be beneficial, but as this section and these definitions were not altered from last year a review or re-write of them is not warranted by this comment. Staff recommended no changes based on these comments.

BOARD RESPONSE: Accepted staff's recommendation.

2. §10.201(2)(B)(iii) - Subchapter C - Filing of Application for Tax-Exempt Bond Developments (37)

COMMENT SUMMARY: Commenter (37) asserted the Department should not require shorter closing expectations for Traditional Carryforward Tax-Exempt bond applications but should instead be more development-friendly with the understanding that it is very difficult to close on a tax-exempt bond development in five months. Commenter (37) suggested the language under (iii) of this subparagraph be removed.

STAFF RESPONSE: Staff recognized that Traditional Carryforward applications are allowed a longer timeframe by which to close and that depending on the financial structure or funding sources involved such timeframe could be warranted. Staff believed it is important for its analysis of financial feasibility be concurrent with the analysis performed by the lender, syndicator and other funding institutions to ensure consistency with the representations made in the application and that it accurately reflects anticipated costs. Recognizing that many aspects of a development can change at any given point, staff did not believe it is unreasonable that after Board consideration the transaction be in a position to close shortly thereafter. Staff recommended no changes based on these comments.

BOARD RESPONSE: Accepted staff's recommendation.

3. §10.202(1) - Subchapter C - Ineligible Applicants (22)

COMMENT SUMMARY: Commenter (22) stated the opening paragraph of this section applies the standard therein to any party on the Development Team, which is defined broadly to include any Person with any role in the Development, which would include not only the developer and guarantor, but also minor players like lawyers, architects, or even construction subcontractor. All of these parties would be held to this standard, and according to commenter (22) it is unconscionable to ask an applicant, developer, or guarantor to make representations and certifications as to every single member of the development team. Commenter (22) recommended the Department only apply these ineligibility standards to those persons reflected on the organizational chart for the applicant, developer and guarantor.

STAFF RESPONSE: Staff partially agreed that these non-substantive clarifications may be beneficial, but as this section and these definitions were not altered from last year a review or re-write of them is not warranted by this comment. Staff recommended no changes based on these comments.

BOARD RESPONSE: Accepted staff's recommendation.

4. §10.203 - Subchapter C - Public Notifications (55), (56), (57), (58), (59), (60), (61), (62)

COMMENT SUMMARY: Commenter (55) contended that the residents of any subdivision should be notified when low-income projects are planned to be built in neighborhoods either through the homeowner's association or through each individual family that is going to be affected. Commenter (56), (57), (58), (59), (60), (61), (62) recommended the changes below to the notification process so that no other community suffers the fate of having an affordable development adjacent to their community without the proper notification and no options to prevent it. "(1) Neighborhood Organization Notifications. (A) The Applicant must identify and notify all Neighborhood Organizations (HOA's) on record with the county or the state as of 90 days prior to the Full Application Delivery Date and whose boundaries are immediately adjacent to or in a radius of two miles from the proposed Development Site. (B) The Applicant must list, in the certification form provided in the Application, all Neighborhood Organizations (HOA's) on record with the county or state as of 90 days prior to the Full Application Delivery Date and whose boundaries are immediately adjacent to or in a radius of two (2) miles from 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..... (A) Neighborhood Organizations (HOA's) on record with the state or county as of 90 days prior to the Full Application Delivery Date whose boundaries are immediately adjacent to or within a two (2) mile radius to the Development Site;.." Commenter (56), (57), (58), (59), (60), (61), (62) additionally proposed new definitions for terms used in this section - specifically to "notify" means the actual or physical presentation of a hardcopy document to an HOA and that meetings or conversations are not considered notifications; and to "identify" means an actual or physical list as a hardcopy document of HOA's, along with physical addresses, and contact person and phone number.

STAFF RESPONSE: In response to commenters, this is a significant change and would immediately place a new considerable burden on 2016. Staff believed that the extent of this proposed change to the scope of this rule would require renewing the rule-making process and re-publication prior to adoption. Staff recommended no changes based on these comments.

BOARD RESPONSE: Accepted staff's recommendation.

5. §10.204(5)(B) - Subchapter C - Designation as Rural or Urban (19)

COMMENT SUMMARY: Commenter (19) expressed support for the proposed language and stated it is well thought-out and in accordance with statute.

STAFF RESPONSE: Staff appreciated the support expressed by commenter (19). Staff recommended no changes based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

6. §10.204(11) - Subchapter C - Zoning (37)

COMMENT SUMMARY: Commenter (37) suggested that the annexation of a development site while the application is under review should be allowed to provide evidence of appropriate zoning with the Commitment or Determination Notice or provide evidence of vested rights prior to construction commencement. Commenter (37) further stated that involuntary annexation is a key indicator of housing discrimination and a tool the city could use to prevent the application from being awarded; however, vested rights and other legal vehicles are available to the developer and do not require proper zoning.

STAFF RESPONSE: As it relates to zoning, the rule has required that in instances where an applicant has requested a zoning change then evidence is required at the time of Commitment or Determination Notice that such zoning change was approved. This indicates that they can build what they've represented in the application. In instances where while the application is under review an annexation of a development site occurred, staff did not believe it is unreasonable to request documentation at the time of Commitment or Determination Notice that an applicant has the ability to build what they've proposed on the site. If it was determined that the annexation precluded the applicant from building on the site, staff would be in a position to allocate those credits to the next application in line. Staff recommended no changes based on these comments.

BOARD RESPONSE: Accepted staff's recommendation.

7. §10.204(14) - Subchapter C - Nonprofit Ownership (3), (21), (22), (37), (45)

COMMENT SUMMARY: Commenter (3), (21), (22), (45) asserted the requirement for documentation to substantiate a property tax exemption adds unnecessary costs to the preparation of an application and believed that applicants relying on a property tax exemption should do so at their own risk. Commenter (21), (45) stated that many attorneys will not want to verify something that is out of their control because only Appraisal Districts can officially grant the exemption. Commenter (3), (21), (45) requested this threshold requirement be deleted. Commenter (37) suggested in lieu of an attorney statement or opinion, an applicant be allowed to provide a predetermination notice from the applicable appraisal district, but also suggested the Department should recognize state law and not require a non-profit to bear the additional cost burden associated with the attorney statement. Commenter (45) recommended that should this requirement remain that it be moved to Subchapter D, relating to the Real Estate Analysis rules, such that the cost is only borne if the application is underwritten, and that it be included as a condition of the award to be met at Commitment. Commenter (22) explained that when their firm issues opinions on ad valorem tax exemptions, their client has already gone through the pre-determination process with the appraisal district and their opinion is based upon the pre-determination from the appraisal district and further noted that there is not sufficient time in the application process to obtain the pre-determination such that an opinion can be issued. Moreover, commenter (22) was unclear as to the purpose of the language for the PILOT agreement since it is different from an exemption and is only utilized when a property actually has an exemption by right. Commenter (22) recommended the following modification: "(C) Any Applicant proposing a Development with a property tax exemption must include a letter from an attorney identifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review. Additionally, any Development with a proposed Payment in Lieu of Taxes ("PILOT") agreement must provide evidence regarding the statutory basis for the PILOT and its terms."

STAFF RESPONSE: In response to commenter (3), (21), (37), (45), to the extent that financial feasibility, as evaluated by the Department, is dependent upon such exemption, staff did not believe that it is unreasonable to request documentation indicating it is reasonably expected that a development would qualify for a property tax exemption. Staff modified the language consistent with what was suggested by commenter (22) and incorporated the change into the Post Award and Asset Management Requirements Rules. Moreover, in response to commenter (45) the documentation would be required to be submitted at the time of Commitment or Determination Notice. The language as it relates to this requirement has been removed from this section and the following has been added under §10.402(d): "(7) for Applications underwritten with a property tax exemption documentation must be submitted in the form of a letter from an attorney identifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review. Additionally, any Development with a proposed Payment in Lieu of Taxes ("PILOT") agreement must provide evidence regarding the statutory basis for the PILOT and its terms."

BOARD RESPONSE: Accepted staff's recommendation.

8. §10.205(5)(B) - Subchapter C - Site Design and Development Feasibility Report (45)

COMMENT SUMMARY: Commenter (45) suggested this report be moved to section §10.204 of the rules so that it is not subject to the same scrutiny as the other third party reports, specifically as it relates to the requirement that they be submitted in their entirety or the application would be terminated. Commenter (45) contended that unlike the other third party reports which are actually completed by third party professionals, the site design and feasibility report can be compiled by the applicant from more than one service provider and to some extent the information contained therein is included in other parts of the application. Commenter (45) recommended this report be subject to the Administrative Deficiency process, including the provision relating to "matters of a material nature not susceptible to being resolved" instead of the provision included in the introductory paragraph for third party reports.

STAFF RESPONSE: Staff agreed with the recommendation of commenter (45). The paragraph relating to the Site Design and Development Feasibility Report was been moved to §10.204.

BOARD RESPONSE: Accepted staff's recommendation.

9. §10.207(a)(1) - Subchapter C - Waiver of Rules for Applications (45)

COMMENT SUMMARY: Commenter (45) requested clarification regarding the authority of the Executive Director to grant waivers. Specifically, the rule indicates that the Executive Director may waive requirements "as provided in this rule" which has been understood to mean that unless a section of the rule actually speaks to a waiver of that particular rule, the Executive Director does not have the authority to entertain a waiver of that rule. Commenter (45) further explained that the only place in the rule that specifically mentions such authority is in the introductory paragraph relating to fees, under Subchapter G and further stated that §11.6(5) relating to Force Majeure is the only other place where waivers are mentioned in that waivers will not be accepted. Commenter (45) asserted that because this waiver section alludes to a process by which an applicant could appeal the denial of a waiver request by the Executive Director it implies that such waiver requests would actually be entertained and further asserted that if waiver requests will not be entertained then the provision should be deleted so as to speed up the process by which such requests would be presented to the Board. Commenter (45) suggested that should such requests be entertained by the Executive Director, the section should be modified accordingly and suggested the following: "(b) Waivers Granted by the Executive Director. The Executive Director may consider requests to waive requirements of those provisions of this rule listed in subsection (a) of this section. Even if this

section of the 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..."

STAFF RESPONSE: Staff agreed and modified the language as recommended by commenter (45).

BOARD RESPONSE: Accepted staff's recommendation.

The Board approved the final order adopting the new sections on November 12, 2015.

INDEX OF COMMENTERS

(3) Texas Affiliation of Affordable Housing,

(19) R.L. "Bobby" Bowling IV,

(21) Structure Development,

(22) Cynthia Bast, Locke Lord,

(37) Terri Anderson,

(45) Pedcor Investments.

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

§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.

(I) If the Development has an existing LURA with the Department, the Development Owner will comply with the existing restrictions.

(2) Applicant Eligibility Certification. This form, as provided in the Application, must be executed by any individuals required to be listed on the organizational chart and also identified in subparagraphs (A) - (D) below. The form 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).

(A) for for-profit corporations, any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder;

(B) for non-profit corporations or governmental instrumentalities (such as housing authorities), any officer authorized by the board, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, the Audit committee chair, the Board chair, and anyone identified as the Executive Director or equivalent;

(C) for trusts, all beneficiaries that have the legal ability to Control the trust who are not just financial beneficiaries; and

(D) for limited liability companies, 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.

(3) Architect Certification Form. This form, as provided in the Application, must be executed by the Development engineer, an accredited architect or Third Party accessibility specialist. (§2306.6722; §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 such as HOME or CDBG funds. For an Application with a Development Site that is:

(i) Within a municipality, the Applicant must submit a resolution from the Governing Body of that municipality;

(ii) Within the 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.

(A) Each Application must identify whether the Development Site is located in an Urban Area or Rural Area of a Uniform State Service Region. The Department shall make available a list of Places meeting the requirements of 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.

(B) Certain areas located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area can request a Rural designation from the Department for purposes of receiving an allocation Housing Tax Credits (§2306.6740). In order to apply for such a designation, a letter must be submitted from a duly authorized official of the political subdivision or census designated place addressing the factors outlined in clauses (i) - (vi) of this subparagraph. Photographs and other supporting documentation are strongly encouraged. In order for the area to be designated Rural by the Department for the 2016 Application Round, such requests must be made no later than December 15, 2015. If staff is able to affirm the findings outlined in the request, the Rural designation will be granted without further action and will remain in effect until such time that the population as described in clause (i) of this subparagraph exceeds 25,000. In the event that staff is unable to affirm the information contained in the request, a recommendation for denial will be presented to the Board.

(i) The population of the political subdivision or census designated place does not exceed 25,000;

(ii) The characteristics of the political subdivision or census designated place and how those differ from the characteristics of the area(s) with which it shares a contiguous boundary;

(iii) The percentage of the total border of the political subdivision or census designated place that is contiguous with other political subdivisions or census designated places designated as urban. For purposes of this assessment, less than fifty percent contiguity with urban designated places is presumptively rural in nature;

(iv) The political subdivision or census designated place contains a significant number of unimproved roads or relies on unimproved roads to connect it to other places;

(v) The political subdivision or census designated place lacks major amenities commonly associated with urban or suburban areas; and

(vi) The boundaries of the political subdivision or census designated place contain, or are surrounded by, significant areas of undeveloped or agricultural land. For purposes of this assessment, significant being more than one-third of the total surface area of political subdivision/census designated place, or a minimum of 1,000 acres immediately contiguous to the border.

(6) Experience Requirement. Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application, unless an experience certificate was issued by the Department in 2014 or 2015 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 relevant to the Development and affirmatively certifies that the fact pattern of the Development matches the fact pattern in PLR 200916007.

(F) Rental Assistance/Subsidy. (§2306.6705(4)) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds or proof of application for such funds must be provided. Such documentation shall, at a minimum, identify the source and annual amount of the funds, the number of units receiving the funds, and the term and expiration date of the contract or other agreement.

(G) Occupied Developments. The items identified in clauses (i) - (vi) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins. If the 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 sub-

paragraph 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 side of each building type (or include a statement that all other sides are of similar composition as the front) and include a percentage estimate of the exterior composition and proposed roof pitch. Applications for Rehabilitation and Adaptive Reuse may submit photographs if the Unit configurations are not being altered and post-renovation drawings must be submitted if Unit configurations are proposed to be altered.

(10) Site Control.

(A) Evidence that the Development Owner has Site Control must be submitted. If the evidence is not in the name of the Development Owner, then an Affiliate of the Development Owner must have Site Control that 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. In instances where annexation of a Development Site occurs while the Application is under review, the Applicant must

submit evidence of appropriate zoning with the Commitment or Determination Notice.

(A) No Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision that has no zoning.

(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, identifying all Principals thereof and 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 Previous Participation Form to the Department. Individual Principals of such entities identified on the organizational chart must provide the Previous Participation Form, unless excluded from such requirement pursuant to Chapter 1 Subchapter C of this title. 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 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.

(15) 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 that it has been recorded with the appropriate local entity and 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.

§10.205. Required Third Party Reports.

The Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), and the Market Analysis must be submitted no later than the Third Party Report Delivery Date as identified in §10.4of this chapter (relating to Program Dates). For Competitive HTC Applications, the Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), 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 §11.2of 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 §11.2of 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.

§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 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 Adaptive Reuse or Rehabilitation (excluding Reconstruction) Developments, required amenities or design elements in buildings designated as historic structures that would conflict with retaining the historic nature of the building(s), or provisions of the design element or amenity that would not benefit the tenants due to limitations of the existing layout or design of the units for Adaptive Reuse or Rehabilitation (excluding Reconstruction) Developments. Staff may recommend the Board's approval for such a waiver if the Executive Director finds 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 consider requests to waive requirements of those provisions of this rule listed in subsection (a) of this section. Even if this section of the 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 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 December 17, 2015.

TRD-201505713
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 6, 2016
Proposal publication date: September 25, 2015
For further information, please call: (512) 475-3344

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SUBCHAPTER D. UNDERWRITING AND LOAN POLICY

10 TAC §§10.301 - 10.307

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Subchapter D, §§10.301 - 10.307, concerning 2015 Underwriting and Loan Policy, without changes to the proposed text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6427). The rules will not be republished.

REASONED JUSTIFICATION. The repeals were published concurrently with the proposed new 10 TAC Chapter 10, Subchapter D, §§10.301 - 10.307, concerning 2016 Underwriting and Loan Policy. The purpose of the repeals is to allow for the rewrite of portions of the rules.

The Board approved the final order adopting the repeals on November 12, 2015.

The Department accepted public comments between September 25, 2015, and October 15, 2015. Comments regarding the repeals were accepted in writing via fax and email. No comments were received concerning the proposed repeals.

STATUTORY AUTHORITY. The repeals are adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Specifically Texas Government Code §2306.141 gives the Department the authority to promulgate rules governing the administration of its housing programs.

The repeals affect no other code, article or statute.

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

Filed with the Office of the Secretary of State on December 17, 2015.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: September 25, 2015
For further information, please call: (512) 475-2973

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10 TAC §§10.301 - 10.307

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 10, Subchapter D, §§10.301 - 10.307, concerning Underwriting and Loan Policy. Section 10.302 is adopted with changes to the proposed text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6428) and will be republished. Sections 10.301 and 10.303 - 10.307 are adopted without changes.

REASONED JUSTIFICATION FOR THE RULE: The adopted new 10 TAC Chapter 10, Subchapter D, §§10.301 - 10.307, concerning Underwriting and Loan Policy was published concurrently with the proposed repeal of the same section. The new rule clarifies language that was previously potentially causing uncertainty and will ensure accurate processing of underwriting activities and communicate the underwriting analysis and recommendations for funding or award by the Department more effectively.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS: The Department accepted public comments between September 25, 2015, and October 15, 2015. Comments regarding the new sections were accepted at a public hearing and in writing and by facsimile. Written comments were received from: (1) Robbye Meyer, Arx Advantage; (2) Diana McIver, DMA Development Company; (3) R.L. "Bobby" Bowling IV, Tropicana Building II; (4) Texas Coalition of Affordable Developers (TX-CAD); (5) Donna Rickenbacker, Marque Real Estate Consultants; (6) Madhouse Development Services; (7) Sara Reidy, Casa Linda Development Corporation; (8) Barry J. Palmer, Coats | Rose; (9) Janine Sisak, Texas Affiliation of Affordable Housing Providers; (10) Terry Anderson, Anderson Development & Construction; (11) Valerie A. Williams, Bank of America; and, (12) Darrell G. Jack, Apartment MarketData.

1. §10.302(d)(1)(A)(i) Market Rents (1), (2), (3), (4), (5), (6), (7), (9), (10), (12)

COMMENT SUMMARY: Commenter (12) supports the proposed rule change. Commenters (1), (2), (6) and (10) propose a change to the staff proposed rule by increasing the maximum market rent assumption from Net Program Rent to Gross Program Rent. Commenter (7) also proposes to change the maximum market rent assumption from Net Program Rent to Gross Program Rent or alternatively set a fixed dollar amount above the 60% rents for each unit type. Commenters (2) and (10) provided additional language to the proposed rule change that would allow the Underwriter to use market rents up to 30% higher than Gross Program Rents if the applicant provides a market study commissioned by the investor. The recommended revisions by commenters (2) and (10) include the following:

"(i) 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. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Gross Program Rent at 60% AMI. As an alternative, if the Applicant submits market rents that are up to 30% higher than the 60% AMI gross rent and the Applicant submits an investor commissioned market study with the application, the Underwriter has the discretion to use the market rents supported by the investor commissioned market study."

Commenters (3), (4), (5), and (9) oppose the proposed rule change. Commenter (3) states that the Department already has wide latitude on determining market rents. Commenter (4) suggests that the market analyst is providing the most accurate information. Commenters (5) and (9) state that the rule should not use a one size fits all approach.

STAFF RESPONSE:

Staff continues to believe that in general developments with few market rate units in most markets will have difficulty achieving large market rate premiums over the 60% AMI rents. As a result and to limit the risk associated with not achieving the higher market rents (particularly those developments that depend on these premiums for feasibility), the rule proposes that for developments proposed with 15% or fewer market or unrestricted units, the rents for the market rate units will be capped at the maximum 60% rent level for analysis purposes. Staff agrees with commenters (1), (2), (6), and (10) that the suggested change from Net Program Rents to Gross Program Rents provides a reasonable level of rent premium. Additionally, staff supports the additional language proposed by commenters (2) and (10) as an option for Applicants to provide investor evaluation of market rents and support for higher rents. The staff proposed language is:

"(i) 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. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Gross Program Rent at 60% AMI. As an alternative, if the Applicant submits market rents that are up to 30% higher than the 60% AMI gross rent and the Applicant submits an investor commissioned market study with the application, the Underwriter has the discretion to use the market rents supported by the investor commissioned market study in consideration of the independently determined rents. The Applicant must also provide a statement by the investor indicating that they have reviewed the market study and agree with its conclusions."

2. §10.302(d)(4)(D)(iv) DCR for Direct Loans (4), (9), (10)

COMMENT SUMMARY: Commenter (4) requests that the Department provide information in the rule regarding loan terms and underwriting requirements. They further request consistency in the underwriting standards such that modifications to the loan terms not increase the deferred developer fee above the maximum percentage of deferral due to points claimed for financial feasibility. Commenter also states that any change to the Department's loan terms be acceptable to the first lien mortgage lender and equity provider given their own underwriting criteria and evaluation. The commenter proposed revisions to §10.302(d)(4)(D)(ii) through (iv) are:

"(ii) If the DCR is greater than the maximum allowable at initial underwriting, the recommendations of the Report may be based on an assumed increase to debt service and/or the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (IV) of this clause subject to a Direct Loan NOFA and program rules. If the Applicant received points within the application for Leveraging of Private, State and Federal Resources, then the adjustments made by the underwriter shall not result in a Deferred Developer Fee or more than 50%:

(I) reclassification of Department funded grants to reflect loans with the following terms:

a. _"x"___ interest rate (0-3%)

b. "x"____loan term (30 years or co-terminus with the first mortgage if required by first mortgage lender)

c. _"x"__payment term (soft or hard pay, annual pymt);

(II) an increase in the interest rate or a decrease in the amortization period for Direct Loans as long as such decrease in the amortization period is acceptable to the first mortgage lender and equity syndicator;

(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 as long as such increase in the permanent loan amount is acceptable to the first mortgage lender and equity syndicator

(iii) For Housing Tax Credit Developments, a reduction in the recommended Housing Credit Allocation Amount may be made based on the Gap Method described in subsection (c)(2) of this section as a result of an increased debt assumption, if any.

(iv) The Underwriter may limit total debt service that is senior to a Direct Loan to produce an acceptable DCR on the Direct Loan. An acceptable DCR on the Direct Loan is between a 1.10 and 1.35 at initial underwriting."

Commenter (9) requests that language revert back to 2015 and wants clarity as to why the rule change is proposed and better understand the purpose. Commenter (10) suggests that the underwriter may limit total debt service that is senior to a Direct Loan where a Direct Loan is the only subsidy in the proposed sources.

STAFF RESPONSE: The proposed staff changes to §10.302(d)(4)(D)(i), (ii) and (iii) are clarifying in nature and represent current practice. The changes formalize that terms and conditions indicated in a NOFA or program rules will override these provisions. The changes also provide clarity with respect to how the gap methodology relates to this provision.

Commenter (4) suggested language in (ii) regarding deferred developer fee and its relationship to a scoring item is more appropriately addressed in §11.9(e)(4) relating to Leveraging of Private, State and Federal Resources. Thus, no changes are recommended in this section.

Staff agrees that loan parameters and terms should be known by Applicants at Application. The items suggested in (ii)(I)(a) through (c) are already addressed in the Direct Loan Policy found in §10.307 Direct Loan Requirements. These requirements are subject to the terms and conditions of a NOFA or program rules.

The staff proposed change to §10.302(d)(4)(D)(iv) relates to sizing the amount of debt service that is senior to a Direct Loan. The terms and conditions of a Direct Loan are made at initial underwriting and subject to change should terms and conditions of any other source of funds or uses change. This is a condition of every underwriting report.

In the closing package for a Direct Loan, Applicants submit the final capitalization structure information including the terms and conditions of senior debt, equity and any other source of funds.

Material changes (most notably increased senior debt amount or debt service) could negatively impact the Department's loan as underwritten at Application. These changes could potentially increase repayment risk and thus potentially the Department's liability to HUD.

Generally by the time the closing package is submitted for review by the Department, the senior lender and equity provider have completed their underwriting and are ready to close. This rule change provides some certainty for the Developer by indicating up front at underwriting the amount of acceptable debt service senior to the Direct Loan. This approach allows for changes to the capitalization structure specifically the senior debt amount, interest rate, amortization period and other loan terms. By sizing the payment only and not the other terms of the senior debt, the other finance participants know what to expect as they are structuring their terms. Staff does not recommend lowering the minimum acceptable debt coverage to 1.10 as it increases the Department's risk on the Direct Loans (particularly those funded with HOME funds).

With respect to §10.302(d)(4)(D)(ii)(I) and (II), these provisions describe a tax credit and loan sizing process. Except for the senior debt service amount, the Department does not set terms for any senior lender or equity provider.

Staff does not recommend any changes to the proposed rule in these sections.

3. §10.302(e)(7)(A) Developer Fee (3), (8)

COMMENT SUMMARY: Commenter (3) opposes the proposed rule change stating that this rule change provides a benefit to only public housing authorities and is unfair to private sector developers. Commenter also states that developments with higher debt levels are subject to much greater risk to the Developer as public housing authorities are converting public housing under the HUD Rental Assistance Demonstration ("RAD") program. The commenter proposes the following addition to the rule change to allow riskier, high-debt transactions to benefit from the same preferred treatment as PHA/RAD transaction:

"(A) For Housing Tax Credit Developments, the Developer Fee 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. For Public Housing Authority Developments for conversion under the HUD Rental Assistance Demonstration ("RAD") program that will be financed using tax-exempt mortgage revenue bonds, the Developer Fee cannot exceed 20 percent of the project's eligible cost less Developer Fee. For Developments with at least $25,000 per Unit in conventional debt that will not come from an Affiliate of the Developer or Applicant, nor from a Related Party of the Developer or Applicant, the Developer Fee cannot exceed 20 percent of the project's eligible cost less Developer Fee."

Commenter (8) supports the staff proposed rule change for increased developer fee on transactions using the HUD Rental Assistance Demonstration ("RAD") program on tax-exempt mortgage revenue bonds.

STAFF RESPONSE: Staff evaluated the complexity of converting public housing under the HUD Rental Assistance Demonstration ("RAD") program and layering RAD with tax-exempt mortgage revenue bonds. The Real Estate Analysis division has underwritten RAD transactions with bonds and understands the complexity. The RAD program is a new HUD program whereby guidance and program requirements are changing and evolving. Staff believes that the overhead and resources required of housing authorities to participate in the program represent additional Developer Services above those defined in rule. While an argument has been raised that the RAD program creates greater risk for housing authorities, Staff is not recommending this change due to that argument. Staff recommendation relates to the additional scope of Developer Services required.

Staff does not recommend any changes to the proposed rule in this section.

4. §10.302(e)(7)(C)(ii) Developer Fee (8)

COMMENT SUMMARY: Commenter (8) recommends deletion of this rule which states that no Developer Fee attributable to an identity of interest acquisition of the Development will be included in eligible basis. Commenter's request would allow for eligible Developer Fee on the acquisition of property already owned by a Related Party with an acquisition price based on an appraisal. Commenter further provides as an alternative of this deletion to allow transactions in which public housing authorities sponsor rehabilitation of existing developments be an exception to the existing rule.

STAFF RESPONSE: Current rule does not allow Developer Fee to be paid on Related Party acquisition transactions and staff disagrees with the suggested change. Developer Fee is paid for a scope of work defined as Developer Services. There is no relationship between the amount of Developer Fee earned to the value or sales price of a property. Developer Services include activity such as site selection, sale contract negotiations and due diligence on the property. Because there is no site selection process or negotiation with a Third Party seller, the overall acquisition aspects of Developer Services on Related Party transactions are reduced. Staff has not found evidence that the "relationship between buyer and seller rarely serves to significantly reduce the complexities of the development process."

Staff does not recommend any changes to the proposed rule in this section.

5. §10.302(e)(7)(F) Developer Fee (1), (3), (4), (5), (9)

COMMENT SUMMARY: Commenter (1) requests removal of the proposed language until further discussion with stakeholders occurs. Commenter (3) proposes a reasonable increase in developer fee of up to 15% if cost increases were justified beyond Developer control demonstrated at cost certification. Commenters (4) and (5) also oppose the proposed change stating that increased cost causes increases risk, higher level of guarantees and reduced margins. They also state that since the Developer Fee is the transaction's contingency, limiting this buffer only serves to make a deal weaker financially. Commenter (9) opposes the change saying that higher construction costs require more work for the developer by having to value-engineer the development to reduce costs.

STAFF RESPONSE: Staff continues to believe that Developer Fee should be paid solely for the scope of work under Developer Services. Additional work caused by the lack of up-front due diligence should not warrant additional compensation. As proposed in the rule, staff recognizes that there are many circumstances outside the control of the Developer regardless of the up-front due diligence performed. Construction and soft costs are subject to market changes. City development processes and requirements can cause increased cost that could not have been

seen by the Developer. To some extent, these circumstances may affect the scope of work that must be performed by a Developer and this additional scope should not limit an increased fee. However, staff does not believe that additional fee should be paid when a lack of pre-application due diligence results in increased costs.

Deferral of Developer Fee is a source of funds as a component of the finance mechanism. Deferral of the fee also provides contingency should cost overruns exceed stated contingency. But those factors should have no relevance to sizing of a fee. Increasing the total budget for a higher fee to then be deferred is counter intuitive.

The allowance of additional Developer Fee on an Application has an impact on other Applicants in that more tax credits are being used to compensate Developers in the fashion. For this reason, staff desires to explore mechanisms such as this to prevent this impact. At this time however, staff recommends removing the suggested language from the rule to allow for further discussion with stakeholders about how to address this issue in future rules. The staff proposed language has been removed.

6. §10.302(d)(2)(H)(ii) Expenses (10)

COMMENT SUMMARY: Commenter (10) opposes new proposed language in §10.204(14)(C) relating to the required documentation that must be included in the Application if the Applicant is seeking a property tax exemption or using a PILOT agreement. Because the current proposed language in §10.204(14)(C) is consistent with language in 10.302(d)(2)(H)(ii), a staff response relating to this section is provided here.

Commenter opposes the staff proposed language that would require an Applicant indicating a property tax exemption or PILOT agreement in the Application to provide an attorney statement and documentation supporting the exemption. The commenter states that the Department should recognize state law and not require a non-profit to incur an additional $5K to $10K for an opinion.

STAFF RESPONSE: Staff agrees that documentation supporting a property tax exempt or a PILOT agreement should be required only if the Applicant receives a Commitment Notice. As a result, staff proposes the following change to the proposed rule:

(ii) If the Applicant proposes a property tax exemption or a PILOT agreement, the Applicant must provide documentation in accordance with §10.402(d). At the underwriter's discretion to clarify how such matters will likely be addressed, such documentation may be required prior to Commitment if deemed necessary.

BOARD RESPONSE TO ALL COMMENTS: Agreed with Staff's recommendations.

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

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

§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 of 1986 (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 ("Report") used by the Board in decision making with the goal of assisting as many Texans as possible by providing no more financing than necessary based on an independent analysis of Development feasibility. The Report generated in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development.

(b) Report Contents. The Report provides a synopsis and reconciliation of the Application information submitted by the Applicant. For the purpose of this subchapter the term Application includes additional documentation submitted after the initial award of funds that is relevant to any subsequent reevaluation. The Report contents will be based upon information that is provided in accordance with and within the timeframes set forth in the current Qualified Allocation Plan ("QAP") (10 TAC Chapter 11) or a Notice of Funds Availability ("NOFA"), as applicable, and the Uniform Multifamily Rules (10 TAC Chapter 10, Subchapters A - E and G).

(c) Recommendations in the Report. The conclusion of the Report includes a recommended award of funds or Housing Credit Allocation Amount and states any feasibility or other conditions to be placed on the award. The award amount is based on the lesser of the following:

(1) Program Limit Method. For Housing Credit Allocations, this method is based upon calculation of Eligible Basis after applying all cost verification measures and program limits as described in this section. The Applicable Percentage used is defined in §10.3 of this chapter (relating to Definitions). For Department programs other than Housing Tax Credits, this method is based upon calculation of the funding limit in current program rules or NOFA at the time of underwriting.

(2) Gap Method. This method evaluates the amount of funds needed to fill the gap created by Total Housing Development Cost less total non-Department-sourced funds or Housing Tax Credits. In making this determination, the Underwriter resizes any anticipated deferred developer fee downward (but not less than zero) before reducing the amount of Department funds or Housing Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Housing Tax Credits. In making this determination and based upon specific conditions set forth in the Report, the Underwriter may assume adjustments to the financing structure (including treatment of cash flow loans as if fully amortizing over its term) or make adjustments to any Department financing, such that the cumulative Debt Coverage Ratio ("DCR") conforms to the standards described in this section. For Housing Tax Credit Developments at cost certification, timing adjusters may be considered as a reduction to equity proceeds for this purpose. Timing adjusters must be consistent with and documented in the original partnership agreement (at admission of the equity partner) but relating to causes outside of the Developer's or Owner's control. The equity partner must provide a calculation of the amount of the adjuster to be used by the Underwriter.

(3) The Amount Requested. The amount of funds that is requested by the Applicant. For Housing Tax Credit Developments (exclusive of Tax-Exempt Bond Developments) this amount is limited to the amount requested in the original Application documentation.

(d) Operating Feasibility. The operating feasibility of a Development funded by the Department is tested by analyzing its Net Operating Income ("NOI") to determine the Development's ability to pay debt service and meet other financial obligations throughout the Affordability Period. NOI is determined by subtracting operating expenses, including replacement reserves and taxes, from rental and other income sources.

(1) Income. In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's income pro forma by determining the appropriate rental rate per unit based on subsidy contracts, program limitations including but not limited to utility allowances, actual rents supported by rent rolls and Market Rents and other market conditions. Miscellaneous income, vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are used unless well-documented support is provided and independently verified by the Underwriter.

(A) Rental Income. The Underwriter will review the Applicant's proposed rent schedule and determine if it is consistent with the representations made throughout the Application. The Underwriter will independently calculate a Pro Forma Rent for comparison to the Applicant's estimate in the Application.

(i) Market Rents. The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §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. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Gross Program Rent at 60% AMI. As an alternative, if the Applicant submits market rents that are up to 30% higher than the 60% AMI gross rent and the Applicant submits an investor commissioned market study with the application, the Underwriter has the discretion to use the market rents supported by the investor commissioned market study in consideration of the independently determined rents. The Applicant must also provide a statement by the investor indicating that they have reviewed the market study and agree with its conclusions.

(ii) Gross Program Rent. The Underwriter will use the Gross Program Rents for the year that is most current at the time the underwriting begins. When underwriting for a simultaneously funded competitive round, all Applications are underwritten with the Gross Program Rents for the same year. If Gross Program Rents are adjusted by the Department after the close of the Application Acceptance Period, but prior to publication of the Report, the Underwriter may adjust the Effective Gross Income ("EGI") to account for any increase or decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.

(iii) Contract Rents. The Underwriter will review rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The Underwriter will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the Applicant's proposed rents may be used as the Pro Forma Rent, with the recommendations of the Report conditioned upon receipt of final approval of such an increase.

(iv) Utility Allowances. The Underwriter will review Utility allowances calculated for individually metered tenant paid utilities considered to reflect a tenant's actual consumption. Methodologies for calculating Utility allowances can be found in Subchapter F, §10.614. The Underwriter generally uses the most current Public Housing Authority ("PHA") utility allowance schedule. Should HUD issue guidance requiring a different methodology for Direct Loan Programs, that methodology will be followed.

(v) Net Program Rents. Gross Program Rent less Utility Allowance.

(vi) Actual Rents for existing Developments will be reviewed as supported by a current rent roll. For Unstabilized Developments, actual rents will be based on the most recent units leased with occupancy and leasing velocity considered. Actual rents may be adjusted by the Underwriter to reflect lease-up concessions and other market considerations.

(vii) Collected Rent. Represents the monthly rent amount collected for each Unit Type. For rent-assisted units, the Contract Rent is used. In absence of a Contract Rent, the lesser of the Net Program Rent, Market Rent or actual rent is used.

(B) Miscellaneous Income. All ancillary fees and miscellaneous secondary income, including, but not limited to late fees, storage fees, laundry income, interest on deposits, carport and garage rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a $5 to $20 per Unit per month range. Exceptions may be made at the discretion of the Underwriter and must be supported by either the normalized operating history of the Development or other existing comparable properties within the same market area.

(i) The Applicant must show that a tenant will not be required to pay the additional fee or charge as a condition of renting a Unit and must show that the tenant has a reasonable alternative.

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

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

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

(C) Vacancy and Collection Loss. The Underwriter generally uses a normalized 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. 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 immediate market area's historical performance reflected in the Market Analysis is consistently higher than a 95 percent occupancy rate.

(D) Effective Gross Income ("EGI"). EGI is the total of Collected Rent for all units plus Miscellaneous Income less Vacancy and Collection Loss. If the Applicant's pro forma EGI is within 5 percent of the EGI independently calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating the underwritten DCR the Underwriter's pro forma will be used unless the Applicant's pro forma meets the requirements of paragraph (3) of this subsection.

(2) Expenses. In determining the first year stabilized operating expense pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate based upon the characteristics of each Development, including the location, utility structure, type, the size and number of Units, and the Applicant's management plan. Historical, stabilized and certified financial statements of an existing Development or Third Party quotes specific to a Development will reflect the strongest data points to predict future performance The Underwriter may review actual operations on the Applicant's other properties monitored by the Department, if any, or review the proposed management company's comparable properties. The Department's Database of prop-

erties located in the same market area or region as the proposed Development also provides data points; expense data from the Department's Database is available on the Department's website. Data from the Institute of Real Estate Management's ("IREM") most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as PHA Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(A) General and Administrative Expense ("G&A")--Accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. G&A does not include partnership related expenses such as asset management, accounting or audit fees. Costs of tenant services are not included in G&A.

(B) Management Fee. Fee paid to the property management company to oversee the operation of the Property and is most often based upon a percentage of EGI as documented in an existing property management agreement or proposal. Typically, 5 percent of EGI 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. Compensation, insurance benefits, and payroll taxes for on-site office, leasing and maintenance staff. Payroll does not include Third-Party security or tenant services contracts. Staffing specific to tenant services, security or other staffing not related to customary property operations should be itemized and included in other expenses or tenant services expense.

(D) Repairs and Maintenance Expense. Materials and supplies for the repairs and maintenance of the Development including Third-Party maintenance contracts. This line-item does not include costs that are customarily capitalized that would result from major replacements or renovations.

(E) Utilities Expense. Gas and electric energy expenses paid by the Development. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

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

(G) Insurance Expense. Cost of Insurance coverage for the buildings, contents, and general liability, but not health or workman's compensation insurance.

(H) Property Tax. Includes real property and personal property taxes but not payroll taxes.

(i) An assessed value will be calculated based on the capitalization rate published by the county taxing authority. If the county taxing authority does not publish a capitalization rate, a capitalization rate of 10 percent or a comparable assessed value may be used.

(ii) If the Applicant proposes a property tax exemption or PILOT agreement the Applicant must provide documentation in accordance with §10.402(d). At the underwriter's discretion, such documentation may be required prior to Commitment if deemed necessary.

(I) Replacement Reserves. Periodic deposits to a reserve account to pay for the future replacement or major repair of building systems and components (generally items considered capitalized costs).The Underwriter will use a minimum reserve of $250 per Unit for New Construction and Reconstruction Developments and $300 per Unit for all other Developments. The Underwriter may require an amount above $300 for the Development based on information provided in the 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 Operating Expenses. The Underwriter will include other reasonable, customary and documented property-level operating expenses such as audit fees, security expense, telecommunication expenses (tenant reimbursements must be reflected in EGI) and TDHCA's compliance fees. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees.

(K) Tenant Services. Tenant services are not included as an operating expense or included in the DCR calculation unless:

(i) There is a documented financial obligation on behalf of the Owner with a unit of state or local government to provide tenant supportive services at a specified dollar amount. The financial obligation must be identified by the permanent lender in their term sheet and the dollar amount of the financial obligation must be included in the DCR calculation on the permanent lender's 15-year pro forma at Application. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred; or

(ii) The Applicant demonstrates a history of providing comparable supportive services and expenses at existing affiliated properties within the local area. Except for Supportive Housing Developments, the estimated expense of supportive services must be identified by the permanent lender in their term sheet and included in the DCR calculation on the 15-year pro forma. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred;

(iii) On-site staffing or pro ration of staffing for coordination of services only, not provision of services, can be included as a supportive services expense without permanent lender documentation.

(L) Total Operating Expenses. The total of expense items described above. 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 Applicant's first year stabilized NOI figure is within 5 percent of the NOI calculated by the Underwriter, the Applicant's NOI is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR, the Underwriter's calculation of NOI will be used unless the Applicant's first year stabilized EGI, total operating expenses, and NOI are each within 5 percent of the Underwriter's estimates. For Housing Tax Credit Developments at cost certification, actual NOI will be used as adjusted for stabilization of rents and extraordinary lease-up expenses. Permanent lender and equity partner stabilization requirements documented in the loan and partnership agreements will be considered in determining the appropriate adjustments and the NOI used by the Underwriter.

(4) Debt Coverage Ratio. DCR is calculated by dividing NOI by the sum of scheduled loan principal and interest payments for all permanent debt sources of funds. If executed loan documents do not exist, loan terms including principal and/or interest payments are calculated based on the terms indicated in the most current term sheet(s). Otherwise, actual terms indicated in the executed loan documents will be used. Term sheet(s) must indicate the DCR required by the lender for initial underwriting as well as for stabilization purposes. Unusual or non-traditional financing structures may also be considered.

(A) Interest Rate. The rate documented in the term sheet(s) or loan document(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide a breakdown of the rate index and any component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate assumption, or the Applicant must submit a separate statement from the lender with an estimate of the interest rate as of the date of such statement. At initial underwriting, the Underwriter may adjust the underwritten interest rate assumption based on market data collected on similarly structured transactions or rate index history. Private Mortgage Insurance premiums and similar fees are not included in the interest rate but calculated on outstanding principal balance and added to the total debt service payment.

(B) Amortization Period. For purposes of calculating DCR, the permanent lender's amortization period will be used if not less than thirty (30) years and not more than forty (40) years. Up to fifty (50) years may be used for federally sourced or insured loans For permanent lender debt with amortization periods less than thirty (30) years, thirty (30) years will be used. For permanent lender debt with amortization periods greater than forty (40) years, forty (40) years will be used. For non-Housing Tax Credit transactions a lesser amortization period may be used if the Department's funds are fully amortized over the same period as the primary senior debt.

(C) Repayment Period. For purposes of projecting the DCR over a thirty (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 (maximum of 1.50 for Housing Tax Credit Developments at cost certification).

(i) If the DCR is less than the minimum, the recommendations of the Report may be based on 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 subject to a Direct Loan NOFA and program rules:

(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;

(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 subject to a Direct Loan NOFA and program rules:

(I) reclassification of Department funded grants to reflect loans;

(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 Method described in subsection (c)(2) of this section as a result of an increased debt assumption, if any.

(iv) The Underwriter may limit total debt service that is senior to a Direct Loan to produce an acceptable DCR on the Direct Loan.

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

(A) The Underwriter's or Applicant's first year stabilized pro forma as determined by paragraph (3) of this subsection.

(B) A 2 percent annual growth factor is utilized for income and a 3 percent annual growth factor is utilized for operating expenses except for management fees that are calculated based on a percentage of each year's EGI.

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

(e) Total Housing Development Costs. The Department's estimate of the Total Housing Development Cost will be based on the Applicant's development cost schedule to the extent that costs can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For New Construction Developments, the Underwriter's total cost estimate will be used unless the Applicant's Total Housing Development Cost is within 5 percent of the Underwriter's estimate. The Department's estimate of the Total Housing Development Cost for Rehabilitation Developments will be based in accordance with the estimated cost provided in the PCA 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 cost estimate is utilized and the Applicant's line item costs are inconsistent with documentation provided in the Application or program rules, the Underwriter may make adjustments to the Applicant's Total Housing Development Cost.

(1) Acquisition Costs. The underwritten acquisition cost is verified with Site Control document(s) for the Property.

(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 with 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 with supporting documentation.

(4) Building Costs.

(A) New Construction and Reconstruction. The Underwriter will use the Marshall and Swift Residential Cost Handbook, other comparable published Third-Party cost estimating data sources, historical final cost certifications of previous Housing Tax Credit developments and other acceptable cost data available to the Underwriter to estimate Building Cost. Generally, the "Average Quality" multiple, townhouse, or single family costs, as appropriate, from the Marshall and Swift Residential Cost Handbook or other comparable published Third-Party data source, will be used based upon details provided in the Application and particularly building plans and elevations. The Underwriter will consider amenities, specifications and development types not included in the Average Quality standard. The Underwriter may consider a sales tax exemption for nonprofit General Contractors.

(B) Rehabilitation and Adaptive Reuse.

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

(ii) The Underwriter will use cost data provided on the PCA Cost Schedule Supplement.

(5) Contingency. Total contingency, 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.

(6) General Contractor Fee. General Contractor fees include general requirements, contractor overhead, and contractor profit. General requirements include, but are not limited to, on-site supervision or construction management, off-site supervision and overhead, jobsite security, equipment rental, storage, temporary utilities, and other indirect costs. General Contractor fees are limited to a total of 14 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 Fee 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. For Public Housing Authority Developments for conversion under the HUD Rental Assistance Demonstration ("RAD") program that will be financed using tax-exempt mortgage revenue bonds, the Developer Fee cannot exceed 20 percent of the project's eligible cost less Developer Fee.

(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. All fees required by the construction lender, permanent lender and equity partner must be indicated in the term sheets. Eligible construction period interest is limited to the lesser of actual eligible construction period interest, or the interest on one (1) year's fully drawn construction period loan funds at the construction period interest rate indicated in the term sheet(s). For tax-exempt bond transactions up to twenty four (24) months of interest may be included. Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related Party construction loans is not included in Eligible Basis.

(9) Reserves. Except for the underwriting of a Housing Tax Credit Development at cost certification, the Underwriter will utilize the amount described in the Applicant's project cost schedule if it is within the range of two (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 found by the Underwriter to be both reasonable and well documented. Reserves do not include capitalized asset management fees, guaranty reserves, tenant services reserves or other similar costs. Lease up reserves, exclusive of initial start-up costs, funding of other reserves and interim interest, may be considered with documentation showing sizing assumptions acceptable to the Underwriter. In no instance at initial underwriting will total reserves exceed twelve (12) months of stabilized operating expenses plus debt service (including transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Pursuant to §10.404(c) and for the underwriting of a Housing Tax Credit Development at cost certification, operating reserves that will be maintained for a minimum period of five years and documented in the Owner's partnership agreement and/or the permanent lender's loan documents will be included as a development cost.

(10) Soft Costs. Eligible soft costs are generally costs that can be capitalized in the basis of the Development for tax purposes. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Code. Generally the Applicant's costs are used however the Underwriter will use comparative data to determine the reasonableness of all soft costs.

(11) Additional Tenant Amenities. For Housing Tax Credit Developments and after submission of the cost certification package, the Underwriter may consider costs of additional building and site amenities (suitable for the tenant population being served) proposed by the Owner in an amount not to exceed 1.5% of the originally underwritten Hard Costs. The additional amenities may be included in the LURA.

(12) Special Reserve Account. For Housing Tax Credit Developments at cost certification, the Underwriter may include a deposit of up to $2,500 per Unit into a Special Reserve Account (pursuant to §10.404(d)) as a Development Cost.

(f) Development Team Capacity and Development Plan.

(1) The Underwriter will evaluate and report on the overall capacity of the Development Team by reviewing aspects, including but not limited to those identified in subparagraphs (A) - (D) of this paragraph:

(A) personal credit reports for development sponsors, Developer fee recipients and those individuals anticipated to provide guarantee(s). 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 proposed to be designed to comply with the QAP, or NOFA.

(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 affiliated with the Applicant or otherwise available to the Underwriter. Expense estimates must be categorized as outlined in subsection (d)(2) of this section;

(C) DCR and Long Term Feasibility. Supportive Housing Developments may be exempted from the DCR requirements of subsection (d)(4)(D) of this section if the Development is anticipated to operate without conventional or "must-pay" debt. Applicants must provide evidence of sufficient financial resources to offset any projected 15-year cumulative negative Cash Flow. Such evidence will be evaluated by the Underwriter on a case-by-case basis to satisfy the Department's long term feasibility requirements and may take the form of one or a combination of: executed subsidy commitment(s); set-aside of Applicant's financial resources to be substantiated by current 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 and Individual Unit Capture Rate. The method for determining capture rates for a Development is defined in §10.303of this chapter. The Underwriter will independently verify all components and conclusions of the capture rates and may, at their discretion, use independently acquired demographic data to calculate demand and may make a determination of the capture rates based upon an analysis of the Sub-market. The Development:

(A) is characterized as 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; or

(E) has an Individual Unit Capture Rate for any Unit Type greater than 100 percent.

(F) Developments meeting the requirements of subparagraph (A), (B), (C), (D) or (E) of this paragraph may avoid being characterized as infeasible if clause (i) or (ii) of this subparagraph apply.

(i) Replacement Housing. The proposed Development is comprised of affordable housing which replaces previously existing affordable housing within the Primary Market Area as defined in §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 underwritten capitalization 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) Except when underwritten at cost certification, the first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68 percent for Rural Developments 36 Units or less and 65 percent for all other Developments.

(B) The first year DCR is below 1.15 (1.00 for USDA Developments).

(5) Long Term Feasibility. The Long Term Pro forma, 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 when:

(A) 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 or the HUD Rental Assistance Demonstration Program 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.

(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.

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 December 17, 2015.

TRD-201505721
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 6, 2016
Proposal publication date: September 25, 2015
For further information, please call: (512) 475-2973

SUBCHAPTER E. POST AWARD AND ASSET MANAGEMENT REQUIREMENTS

10 TAC §§10.400 - 10.408

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Subchapter E, §§10.400 - 10.408, concerning Post Award and Asset Management Requirements, as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6444).

REASONED JUSTIFICATION. This repeal was published concurrently with the proposed new 10 TAC Chapter 10, Subchapter E, §§10.400 - 10.408. The purpose of the repeal is to allow for the adoption of the new rule.

The Board approved the final order adopting the repeal on November 12, 2015.

The Department accepted public comment between September 25, 2015, and October 15, 2015. Comments regarding the repeal were accepted in writing via fax and email. No comments were received concerning the proposed repeal.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Specifically Texas Government Code §2306.141 gives the Department the authority to promulgate rules governing the administration of its housing programs. The repeal affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on December 17, 2015.

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Timothy K. Irvine
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10 TAC §§10.400 - 10.408

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 10, Subchapter E, §§10.400 - 10.408, concerning Post Award and Asset Management Requirements. Sections 10.402, 10.405, 10.406, and 10.407 are adopted with changes to the proposed text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6445). Sections 10.400, 10.401, 10.403, 10.404 and 10.408 are adopted without changes and will not be republished. The purpose of the changes to the sections is to clarify, correct and add information from the prior rule 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.

REASONED JUSTIFICATION FOR THE RULE. New 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter E, §§10.400 - 10.408, concerning Post Award and Asset Management Requirements was proposed concurrently with the proposed repeal of the same sections. The new rule clarifies language that was previously potentially causing uncertainty and 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.

REASONED RESPONSE TO PUBLIC COMMENT AND STAFF RECOMMENDATIONS. The Department's responses to all comments received are set out below. The comments and responses include both administrative clarifications and corrections to the amendments recommended by staff and substantive comments on the amendments and the corresponding Departmental responses. Comments and responses are presented in the order they appear in the rules.

Public comments were accepted through October 15, 2015, with seven comments received in writing from: (1) Cynthia Bast, Locke Lord LLP, (2) Texas Association of Affordable Housing Providers (TAAHP), (3) Tropicana Building II, LLC, (4) Texas Coalition of Affordable Developers (TX-CAD), (5) Marque Real Estate Consultants, (6) Bank of America Merrill Lynch, (7) Matt Hull, Texas Association of Community Development Corporations (TACDC)

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

§10.402 - General Comment.

COMMENT SUMMARY: Commenter (1) made several administrative suggestions such as correcting for incorrect capitalization and, wherever practical, the Department has accepted and incorporated these small administrative changes. Commenter (1) also suggested the following change to §10.402(c):

"(c) Tax Credit Amount. 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 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 must be approved 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 and are subject to the Credit Increase Fee as described in §10.901 of this chapter."

STAFF RESPONSE: Staff agreed with the revised language as proposed.

§10.402(d) Documentation Submission Requirements at Commitment of Funds

COMMENT SUMMARY: Commenter (1) proposed the following revised language to increase clarity:

"(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;"

STAFF RESPONSE: staff agreed that the rule could benefit from additional clarity and recommended the amended language below:

"(3) evidence that the signer(s) of the Commitment or Determination Notice have sufficient authority to sign on behalf of the Applicant in the form of a corporate resolution which indicates the sub-entity in Control consistent with the entity contemplated and described in the Application;"

COMMENT SUMMARY: General comment was received in response to a requirement within Chapter 10 Subchapter C relating to evidence of a property tax exemption. A summary of the comment received related to this item can be found in that section of the rule.

STAFF RESPONSE: While comment summary and staff response related to evidence of a property tax exemption can be found under that section of the rule, staff recommended the following amended language:

"(7) for Applications underwritten with a property tax exemption, documentation must be submitted in the form of a letter from an attorney identifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review. Additionally, any Development with a proposed Payment in Lieu of Taxes ("PILOT") agreement must provide evidence regarding the statutory basis for the PILOT and its terms."

§10.402(f)(3) Carryover (Competitive HTC Only)

COMMENT SUMMARY: Commenter (1) proposed revised language below related to requirements at Carryover to further clarify the Department's requirements for amendments:

"(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, any changes in Site Control of the Development Site

between Application and Carryover must be addressed in accordance with §10.405."

STAFF RESPONSE: Staff agreed with the comment that changes can be made to further clarify and recommended the following language:

"(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, any changes to the Development Site acreage between Application and Carryover must be addressed by written explanation or, as appropriate, in accordance with §10.405."

§10.402(g) 10 Percent Test (Competitive HTC Only)

COMMENT SUMMARY: Commenter (1) suggested changes to the provision in the opening paragraph of §10.402(g) concerning a later date used in the proposed Qualified Allocation Plan calendar in §11.2. The Commenter pointed out that the calendar uses a July 3rd date for the 2017 submissions.

STAFF RESPONSE: Staff suggested the change below in response to comment:

"(g) 10 Percent Test (Competitive HTC Only). No later than July 1 of the year following the submission of the Carryover Allocation Agreement or as otherwise specified in the applicable year's Qualified Allocation Plan, under §11.2, documentation must be submitted to the Department..."

COMMENT SUMMARY: Commenter (1) and (3) suggested changes to §10.402(g)(2). Proposed revisions from Commenter (1) are intended to address the ownership transfer and the amendment processes and provide clarity where appropriate. Commenter (3) stated that de minimis changes in sites often happen due to surveying discrepancies or unexpected related events, such as right of way adjustments. Commenter (3) also stated that such de minimis changes have been handled effectively through the administrative amendment process and should not require board approval, which is time consuming for both program participants and for program staff. Commenter (3) suggested the following change to the language:

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

Commenter (1) suggested the following language to the same section:

"(2) evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site. For purposes of this paragraph, any changes in the Development Site between prior to the 10 Percent Test must be addressed in accordance with §10.405;"

STAFF RESPONSE: Staff agreed that the language can be further clarified and recommended the following change:

"(2) evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site. The Development Site must be identical to the Development Site that was submitted at the time of Application submission. For purposes of this paragraph, any changes to the Development Site acreage between Application and 10 Percent Test must be addressed by written explanation or, as appropriate, in accordance with §10.405."

Staff suggested that the change in language will allow for changes to occur by administrative or Board amendment, as appropriate under §10.405, or by sufficient justification related to de minimis measuring discrepancies as determined acceptable by the Department. Staff disagreed, in response to Commenter (3), that the rule change as proposed will require Board approval for de minimis changes. The intent of adding the language concerning amendments to the rule section was to encompass situations in which a site had been amended and therefore, would not be identical to the site submitted at the time of Application. Staff anticipates that the same process concerning material, non-material, or other explanation and resolution of minor and major acreage discrepancies will still occur.

COMMENT SUMMARY: Commenter (1) suggested the following language changes under §10.402(g)(6) to incorporate defined terms and provide more clarity regarding the Department's existing requirements related to changes in Developers and Guarantors:

"(6) a Certification from the lender and syndicator identifying all known Guarantors. If identified Guarantors have changed from the Guarantors identified at the time of Application, a non-material amendment must be requested by the Applicant in accordance with §10.405 of this subchapter, and the new Guarantors must be reviewed in accordance with Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews)."

COMMENT SUMMARY: Commenter (2) stated that while it is agreed that adding new guarantors should require a non-material amendment, such amendment should not be required when the guarantor was listed on the original application as a principal on the owner organizational chart. Commenter (2) suggested the language below:

"(5) a Certification from the lender and syndicator identifying all known Guarantors. If identified Guarantors have changed from the Guarantors or principals identified on the Org Charts submitted at the time of Application, a non-material amendment must be requested by the Applicant and the new Guarantors or principals must be reviewed in accordance with Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews)."

STAFF RESPONSE: Staff agreed with both commenters and suggested the following language to better clarify:

"(5) a Certification from the lender and syndicator identifying all known Guarantors. If identified Guarantors have changed from the Guarantors or Principals identified at the time of Application, a non-material amendment must be requested by the Applicant in accordance with §10.405 of this subchapter, and the new Guarantors or Principals must be reviewed in accordance with Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews)."

COMMENT SUMMARY: Commenter (1) suggested adding the following language as provision (8) under §10.402(g):

"(8) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of 10 Percent Test from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be re-evaluated by the Department for a reduction of credit or change in conditions."

STAFF RESPONSE: While staff partially agreed with the comment, a re-evaluation of a transaction for changes to the financing structure, syndication rate or amount of debt, or syndica-

tion proceeds, is already a requirement and is addressed in the Department's Credit Underwriting Analysis Report. Staff recommended no change.

§10.402(h) Construction Status Report

COMMENT SUMMARY: Commenter (1) suggested the revised language below:

"(1) the executed partnership agreement with the investor (identifying all Guarantors) or, for Developments receiving an award only from the Department's Direct Loan Programs, other documents setting forth the legal structure and ownership. If identified Guarantors have changed from the Guarantors identified at the time of the 10 Percent Test, a non-material amendment must be requested in accordance with §10.405 of this subchapter, and the new Guarantors must be reviewed in accordance with Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews);"

STAFF RESPONSE: Staff agreed with the comments made and proposed the revised language below to clarify when a non-material amendment and previous participation review must take place:

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

§10.402(j) Cost Certification (Competitive and Non-Competitive HTC, and related activities Only)

COMMENT SUMMARY: Commenters (2), (3) and (5) opposed the change in this section requiring a 30 year operating pro forma and requests that the Department revert back to the 2015 language to require a 15 year operating pro forma consistent with the application requirements and past TDHCA policy at cost certification. Commenter (3) further commented that no reasoning was provided by the Department of changes to this section, nor was there any discussion of this proposed major change during the discussions of the proposed rules. Commenter (3) recalled a long debate before the TDHCA Board over this issue back in 2006, at which time the Board decided unanimously that a 30 year pro forma was not reasonable to use for a variety of reasons (i.e., non-HUD financing typically has either a 15 or 18 year term, so the debt must be refinanced at that time anyway on the majority of 9% tax credit deals and the debt structure will change at that time anyway). Commenter (3) stated that this change would create an unfair situation for border developments where rent projections beyond year 15 create a situation where expenses have increased to the point of a DCR below 1.15. Finally, Commenter (3) suggested that if the Department wishes to impose this new standard on TDHCA-financed or HUD-financed developments only the opposition to the provision would be removed.

STAFF RESPONSE: The Department is responsible, under Texas Government Code §2306.185 and Internal Revenue Code §42(m)(2), for reviewing and ensuring the long term affordability and feasibility of a property and that not more housing tax credits are allocated to a development than are necessary for its feasibility. Section 2306.185 specifically requires the Department to "adopt policies and procedures to ensure that...the recipient of funding maintains the affordability of the multifamily housing development for...a 30 year period..." While the application process allows for a 15 year pro forma for initial underwriting, the Department has other tools such as the expense to income ratio, to satisfy the 30 year affordability analysis required by statute. The Department believes that the process of cost certification is unique in that while initial underwriting creates estimates of a project's long term feasibility based on information presented by the Applicant, the cost certification is a review of actual costs and performance of a property once it has reached stabilization, enabling the Department to use better data to review the long-term affordability and feasibility of a property and identify any areas of concern. While an expense to income ratio analysis provides compliance with the 30 year affordability analysis at Application, this tool may not be used at cost certification. Staff believes that, though debt may be refinanced over time, a 30 year pro forma is reasonable given the 30 year or greater period over which a development is expected to maintain its affordability and feasibility under its Land Use Restriction Agreement ("LURA"). Such re-underwriting and analysis at cost certification will assist the Department in ensuring that recipients of funding are able to maintain the affordability of the housing development for the greater of the 30-year period from the date the recipient takes legal possession of the housing or the remaining term of the existing federal government assistance as required under Texas Government Code §2306.185(c). Staff recommended no change.

Section 10.405 Amendments and Extensions

COMMENT SUMMARY: Commenter (2) requested reinstatement of §10.405(4)(G) as reflected below:

"(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;"

The Commenter requested reinstatement of the language "without requiring Board approval" because de minimis changes in sites often happen due to surveying discrepancies or unexpected developed related events, such as right of way adjustments. The Commenter stated that such de minimis changes have been handled effectively through the administrative amendment process and should not require board approval, which is time consuming for both program participants and for program staff.

STAFF RESPONSE: Staff disagreed with the requested change. The language was removed for two reasons: 1) The Department currently calculates changes resulting in modifications of residential density and eliminated the 10 percent change requirement because a 5 percent change in residential density will simultaneously trigger a 10 percent change in site acreage. The Department has kept only the modification to residential density requirement since this type of change requires Board approval pursuant to Texas Government Code §2306.6712; and 2) The rule previously allowed for increases or decreases of at least 10 percent other than changes required by local government; however, on review earlier this past year, the Department has determined that Texas Government Code does not contain the same provision related to changes required by local government and, therefore, such language has been removed. Staff recommended no change.

COMMENT SUMMARY: Commenters (2), (4), (5), and (6) all opposed the addition of new provision §10.405(4)(H). Commenter (2) stated that increases in development costs and changes in financing occur frequently and should be handled administratively as they have been handled in the past. Commenters (4) and (5) suggested that with no precise definition of "significant" an applicant would have no way to determine if an amendment is required, and worried that amendments would delay closings and put a deal in jeopardy. Commenters (4) and (5) also stated that since tax credits are capped upon award, there is no risk to the department for additional costs or financing changes. Commenter (6) stated that changes to feasibility should be handled by the lender(s) and investor and that the provision as currently written would burden Department staff. Commenter (6) also stated that the lender and investor do not want the Department's re-evaluation to cause construction delays and jeopardize placed in service requirements.

Commenter (4) indicated that further discussion with staff on the issue indicates that the main concern with financial changes that may impact feasibility are with regard to TDHCA Direct Loans, and suggested the following rule change:

"(H) For developments with Direct Loans, if there are significant increases in development costs, changes in financing, circumstances that might result in reductions of credit or other changes in the financing conditions such that the financial feasibility of a Development could be affected, then a re-evaluation and analysis by staff assigned to underwrite the applications is required. For all other developments, if there are significant increases in development costs, changes in financing, circumstances that might result in reduction of credit or other changes in the financing conditions such that the financial feasibility of a Development could be affected, the applicant should provide a notification to the agency along with a certification from the equity provider and/or lender certifying that the development remains financially feasible and that they intend to continue their investment in the transaction."

Commenter (6), rather than simple deletion, requested that the Department add language that will require a letter from a lender stating that the development will remain financially feasible and provided the following suggested language:

"(H) Significant increase in development costs or changes in financing that may affect the financial feasibility of the Development or result in reductions of credit or changes in conditions such that the developer will advise, in writing, the Department Staff, and provide a Lender and or Investor (Syndicator) letter with a statement of financial feasibility."

Commenter (1) suggested the following language:

"(H) Significant increases in development costs or changes in financing that would affect the financial feasibility of the Development in accordance with subchapter D or result in reductions of Tax Credits between the time of 10 Percent Test and Cost Certification or changes in conditions such that a full re-evaluation and analysis by staff assigned to underwrite applications is required; or"

STAFF RESPONSE: Staff appreciates the concern for the possibility of this process being burdensome for the Department; however, this is not a change in process or policy. The Department's Credit Analysis Underwriting Reports already include a requirement to re-evaluate changes such as those proposed in this provision and have for over the past ten years. Staff believes the addition of this provision satisfies the Department's responsibilities under Internal Revenue Code §42(m) and Texas Government Code §2306.185. Staff suggested the following language to further clarify:

"(H) Significant increases in development costs or changes in financing that affect the Department's direct loan financing structure or result in reductions of credit and where either of such changes are not agreed to by the Applicant or Development Owner; or"

COMMENT SUMMARY: Commenter (1) suggested a variety of comments that were both substantive in nature and suggestive of re-organization of the flow of subsections (a) and (b) of the amendments section in §10.405. Commenter (1) recognizes and supports TDHCA's need for accurate and ongoing information about a Development, but comments regarding the amendment process were provided with the reasoning that the process for seeking amendments is increasingly burdensome on both the ownership/financing communities and TDHCA staff. The Commenter suggested a proposal for a three-tiered system which would recognize distinctions between: 1) Notice items (immaterial items important for TDHCA's record-keeping such as small changes to a legal description, changes in ownership among family members for estate planning purposes, etc.), 2) Administrative amendments (items that can be changed with staff approval but which do not require Board consideration (such as amenities that are changed without impact on application scores), and 3) Material amendments (items as already listed that require Board approval). The Commenter has stated that the proposed changes could be made within the logical outgrowth doctrine and that the process would serve to clarify the existing published rules and establish what level of approval is required based on certain circumstances. Commenter (1) proposed the following re-organization and revised language for §10.405:

"(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) Once a Development receives a Commitment or Determination Notice, the Department expects the Development Owner to construct or rehabilitate, operate, and own the Development consistent with the representations in the Application. The Department must receive notification of any amendments to the Application. To the extent the proposed amendment does not require modification of a LURA, Department approval shall be required in accordance with this section. An amendment request shall be submitted in writing, containing a detailed explanation of the amendment request and other information as determined to be necessary by the Department, along with any applicable fee as identified in §10.901(13) of this chapter (relating to Fee Schedule). The request will be processed as follows:

(1) Notification Items. The following amendments shall not require Department approval, unless staff requires additional information or notifies the Development Owner that an administrative approval will be required:

[insert here]

(2) Nonmaterial Amendments. The Executive Director may administratively approve all non-material amendments, including:

(A) any amendment that is not a notification item, as identified in paragraph (1) above or a material alteration, as identified in paragraph (3) below;

(B) changes to the Person used to meet the experience requirement in §10.204(6) of this chapter (relating to Required Documentation for Application Submission); or

(C) changes involving the Developer or Guarantor or the Control thereof. Changes in Developers or Guarantors will be subject to Previous Participation requirements as further described in §10.204(13).

(3)Material Amendments. Regardless of development stage, the Board shall re-evaluate a Development that undergoes a material alteration, as identified below, 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 or Competitive HTC Application, and may reallocate the credits to other Applicants on the waiting list. Amendment requests for a material alteration may be denied if the Board determines that the modification proposed in the amendment:

would materially alter the Development in a negative manner;

would have adversely affected the selection of the Application in the Application Round; or

was reasonably foreseeable and preventable by the Development Owner unless good cause is found for the approval of the amendment.

Material alteration of an Application or Development includes, but is not limited to:

any matter that would have changed the scoring of an Application in the competitive process in a manner that the Application would not have received a funding award;

a significant modification of the site plan;

a modification of the number of units or bedroom mix of units;

a substantive modification of the scope of tenant services;

a reduction of 3 percent or more in the square footage of the units or common areas;

a significant modification of the architectural design of the Development;

a modification of the residential density of at least 5 percent;

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);

an increase or decrease in the site acreage, other than changes required by local government, of greater than 10 percent from the original site proposed in Site Control in the Application;

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 re-evaluated by the Department for a reduction of credit or change in conditions.

Significant increases in development costs or changes in financing that would affect the financial feasibility determination of the Development in accordance with subchapter D, or result in reductions of Tax Credits between the time of 10 Percent Test and Cost Certification such that a full re-evaluation and analysis by staff assigned to underwrite applications is required; or

any other modification considered significant 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))

(4) Amendments Involving Ownership. Any amendments involving ownership of the Property or the Development Owner, directly or indirectly, shall be addressed in accordance with §10.406.

(5) Compliance. This section shall be administered in a manner that is consistent with §42 of the Code. An amendment will not be approved if a 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. An amendment will not be approved if the Development Owner owes fees to the Department.

Amendments to the LURA. Department approval shall be required for any amendment to a LURA in accordance with this section. An amendment request shall be submitted in writing, containing a detailed explanation of the amendment request, the reason the change is necessary, the good cause for the change, financial information for the Department to evaluate the financial impact of the change, if the necessity for the amendment was reasonably foreseeable at the time of Application, and other information as determined to be necessary by the Department, along with any applicable fee as identified in §10.901 of this chapter (relating to Fee Schedule). 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.

Non-Material Amendments. The Executive Director or designee may administratively approve all LURA amendments which are not defined as Material Amendments pursuant to paragraph (2), below. 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.

(1) Material Amendments. The Board must consider and approve a material amendment to the LURA in accordance with the following:

(A) 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;

(B) 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 draft notice within three (3) business days of receipt;

(C) 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, the removal of material participation by a HUB or Nonprofit Organization as further described in §10.406 of this subchapter, a change in the Right of First Refusal period as described in amended §2306.6725 of the Texas Government Code, or any amendment deemed material by the Executive Director or Board;

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

(i) 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. If the request is based upon financial feasibility, the lender and syndicator must submit written confirmation that the Development is financially infeasible without the adjustment in Units, and any affirmative recommendation by the staff to the Board is contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued financial feasibility of the Development; and

(ii) 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.

Preparation of Amendment. Upon approval of a LURA amendment request, Department staff will provide the Development Owner an amended LURA for execution and recordation in the county where the Development is located.

Compliance. 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. 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."

STAFF RESPONSE: While staff appreciates the effort of the Commenter in re-organizing and attempting to add clarification to the amendments rule section, staff has also noted substantive changes within the changes recommended, such that staff believes that the changes as proposed cannot all be recommended without allowing for further consideration and discussion by internal staff and the development community. As such, staff does not agree with a full reorganization of this section at this time, but has reviewed and incorporated changes considered smaller reorganization details and changes that are non-substantive in nature, which will be summarized in response to the Commenter in the block section related to §10.405 below along with staff's additional edits. Staff also agrees with the Commenter that additional change may be needed to further clarify the amendments process and would like to begin next year's rule making cycle with an in depth review of these substantive changes, to better determine at that time what items may be incorporated and whether any process improvements may be necessary in order to better align this section of the rule with the practices and goals of the Department. Staff proposed the following amended language to §10.405(a) and (b):

"(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) Once a Development receives a Commitment or Determination Notice, the Department expects the Development Owner to construct or rehabilitate, operate, and own the Development consistent with the representations in the Application. The Department must receive notification of any amendments to the Application. Regardless of development stage, the Board shall re-evaluate a Development that undergoes a material change, as identified in paragraph (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 or Competitive HTC Application, and may reallocate the credits to other Applicants on the waiting list.

(1) Requesting an amendment. The Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in §10.901(13) of this chapter (relating to Fee Schedule) in order to be received and processed by the Department. Department staff will evaluate the amendment request to determine if the change would affect an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection.

(2) Nonmaterial Amendments. 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). Changes in Developers or Guarantors will be subject to Previous Participation requirements as further described in §10.204(13).

(3) Material Amendments. Amendments considered material pursuant to paragraph (3) 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, no-

tice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4)). Material Amendment requests may be denied if the Board determines that the modification proposed in the amendment would materially alter the Development in a negative manner or would have adversely affected the selection of the Application in the Application Round. Material alteration of a Development includes, but is not limited to:

(A) a significant modification of the site plan;

(B) a modification of the number of units or bedroom mix of units;

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

(D) a reduction of 3 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 of at least 5 percent;

(G) 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);

(H) Significant increases in development costs or changes in financing which affect the Department's direct loan financing structure or result in reductions of credit and where either of such changes are not agreed to by the Applicant or Development Owner; or"

(I) any other modification considered significant by the Board.

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

(5) This section shall be administered in a manner that is consistent with §42 of the Code. If a Development has any uncorrected issues of noncompliance outside of the Corrective Action Period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department prior to approving an amendment request unless otherwise approved by the Executive Award Review and Advisory Committee.

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

(A) for amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence 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 financial feasibility of the Development; and

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

(b) Amendments to the LURA. Department approval shall be required for any amendment to a LURA in accordance with this section. An amendment request shall be submitted in writing, containing a detailed explanation of the request, the reason the change is necessary, the good cause for the change, financial information if the change will result in any financial impact on the development, information related to whether the necessity of the amendment was reasonably foreseeable at the time of application, and other information as determined to be necessary by the Department, along with any applicable fee as identified in §10.901 of this chapter (relating to Fee Schedule). 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. LURAs will only be amended if non-compliance or outstanding payment is resolved to the satisfaction of the Department as provided in subsection (5) of this section. 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 paragraph (3) of this subsection must be followed.

(1) Non-Material Amendments. The Executive Director or designee may administratively approve all amendments not defined as Material Amendments pursuant to paragraph (2) below. 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.

(2) Material Amendments. The Board must consider and approve the following material amendments:

(i) reductions to the number of Low-Income Units;

(ii) changes to the income or rent restrictions;

(iii) changes to the Target Population;

(iv) substantive modifications in the scope of tenant services

(v) the removal of material participation by a HUB or Nonprofit Organization as further described in §10.406 of this subchapter;

(vi) a change in the Right of First Refusal period as described in amended §2306.6725 of the Texas Government Code;

(vii) any amendment deemed material by the Executive Director.

(3) Other Material Amendment Requirements. Prior to staff taking a recommendation to the Board for consideration, the following must take place:

(i) 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

(ii) 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.

(4) Approval. Once the LURA Amendment has been approved administratively or by the Board, as applicable, Department staff will provide the Development Owner with a LURA amendment for execution and recordation in the county were the Development is located."

Section 10.406 Ownership Transfers

COMMENT SUMMARY: Commenter (7) stated that similar to concerns raised under §11.9(b)(2) of the Qualified Allocation Plan regarding Sponsor Characteristics, concerns relating to §10.406(d) may encourage the removal of participating nonprofit organizations from the development ownership structure without cause and beyond the legislative intent of HB3567 regarding changes to the Right of First Refusal when selling properties. Commenter (7) "encourage(d) staff to look at additional safeguards to protect the ownership interest of nonprofits materially participating in joint venture agreements."

STAFF RESPONSE: The comment provided was general and did not include recommended revised language or propose particular changes, to this section of the rule. Therefore, staff recommended no change based upon this comment.

COMMENT SUMMARY: Commenter (1) suggested reorganization changes to §10.406 subsections (a) and (b) and standardized use of the defined term "Principals" where possible to increase the clarity of the section. Commenter (1) also provided public comment to Subchapter A, Definitions, stating that the defined term "Qualified Purchaser" is only used twice throughout the Uniform Multifamily Rules under §10.408 regarding Qualified Contracts and further expressed support for the definition and suggested it be used more consistently, especially in the ownership transfer section of the rules. The Commenter has stated that the proposed changes could be made within the logical outgrowth doctrine and that the process would serve to clarify the existing published rules and establish what level of approval is required based on certain circumstances. Commenter (1) proposed the following re-organization and revised language for §10.406(a) and (b):

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

(b) Exceptions. The following exceptions to the ownership transfer process outlined herein apply:

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

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible, with an Ownership Transfer packet, due to the sensitive timing and nature of this decision.

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

(4) Changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner do not require advance approval but must be reported to the Department as soon as possible, due to the sensitive timing and nature of this decision.

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §10.202 of Subchapter C. In addition, new members with a controlling interest will be reviewed in accordance with Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews).

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

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein.

(d) Removal Issues. 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 Chapter 1, Subchapter C of this part (relating to Previous Participation Re-

views), prior to recommending any new financing or allocation of credits.

Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) an Applicant may request an amendment to its ownership structure to add Principals. The party(ies) reflected in the Application as having Control must remain in the ownership structure and retain such Control, unless approved otherwise by the Board. An Applicant, General Partner or Development Owner may not sell the Development in whole or voluntarily end its Control prior to the issuance of 8609s.

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

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 and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization or CHDO, 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 nonprofit organization or CHDO, as applicable, that complies with the LURA.

Exceptions to the above may be made on a case by case basis if the Development is past its Compliance Period, was not reported to the IRS as part of the Department's Non-Profit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1)-(5) of this chapter (relating to LURA Amendments that require Board Approval). The Board must find that:

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

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

the proposed purchaser meets the Department's standards for ownership transfers.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner, (ii) determines to sell its ownership interest or (iii) determines to maintain its ownership interest but is unable to maintain its HUB status, in either case, after the issuance of 8609's, the purchaser of that general partnership interest or the general partner is not required to be a HUB as long as the LURA does not require such continual ownership, or the procedures outlined in §10.405(b)(1) - (5) of this chapter (relating to LURA Amendments that require Board Approval) have been followed and 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:

the selling HUB is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

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

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 must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

a written explanation outlining the reason for the request;

ownership transfer information, including but not limited to the type of sale, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §10.204(13)(A) of Subchapter C;

(4) a list of the names and contact information for transferees and Principals;

Previous Participation information for any new Principal as described in §10.204(13)(b) of Subchapter C;

agreements among parties associated with the transfer;

a fully executed Owner's Certification of Agreement to Comply with the LURA, which may be subject to recording as required by the Department;

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

detailed information describing the organizational structure, experience, and financial capacity of the transferees and any Principal or Controlling entity;

evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 30 calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired;

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

(g) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this part, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §10.202 of Subchapter C (relating to ineligible applicants and applications).

(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:

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

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, Past Due Fees and Underfunded Reserves. Any new Development Owner or new Principal of a Development Owner approved in the ownership transfer process must comply with all requirements stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner and its Principals, as on record with the Department, will be liable for any penalties or fees imposed by the Department, even if such penalty can be attributable to the new Development Owner or Principals, unless such ownership transfer is approved by the Department. In the event a Development undergoing an ownership transfer has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PCA, the proposed new Development Owner or Principals may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Development Owner or Principals as a condition to approving the Transfer.

(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)."

STAFF RESPONSE: As it relates to the suggestion to utilize the defined term "Qualified Purchaser" more often, especially in the ownership transfer section of the rule, staff will take that under advisement and will look at incorporating this defined term in this section, as appropriate, in a future rule. Staff agreed with the majority of the Commenter's reorganization comments concerning §10.406 (a) and (b) related to Ownership Transfers and has incorporated reorganization and wording changes as appropriate. Staff proposed the following amended language to §10.406 (a) and (b):

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

(b) Exceptions. The following exceptions to the ownership transfer process outlined herein apply:

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

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible by submission of an Ownership Transfer packet, due to the sensitive timing and nature of this decision.

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

(4) Changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the same resulting owner do not require advance approval but must be reported to the Department as soon as possible, due to the sensitive timing and nature of the decision.

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §10.202 of Subchapter C (relating to Eligible Applicants). In addition, new Principals will be reviewed in accordance with Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews).

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

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

(d) Transfer Actions Warranting Debarment. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure or the Department at risk for financial exposure as a result of non-compliance, staff 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 Chapter 1, Subchapter C of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(e) Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) an Applicant may request an amendment to its ownership structure to add Princi-

pals. The party(ies) reflected n the Application as having control must remain in the ownership structure and retain such control, unless approved otherwise by the Board. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their control prior to the issuance of 8609s."

COMMENT SUMMARY: Commenter (1) proposed the following language for 10.406(f)(5), and staff agreed with the amended language as proposed:

"(5) Previous Participation information for any new Principal as described in §10.204(13)(b) of Subchapter C;"

STAFF RESPONSE: Staff agreed with the amended language as proposed.

COMMENT SUMMARY: Commenter (2) supports staff proposed changes to the §10.406(d)(3) as it relates to Non-Profit Organizations, stating that the membership appreciates the provision for greater flexibility in cases where an award was not made out of the non-profit set aside.

STAFF RESPONSE: Staff appreciates the positive comment and recommended no further change.

Section 10.407 Right of First Refusal

COMMENT SUMMARY: Commenter (1) recommended the implementation of a definition of "Qualified Entity" that is consistent with statute. Commenter (1) states that HB 3576 has expanded the type of entities that can acquire under the ROFR process to include any entity permitted under §42(i)(7) of the Code and any entity controlled by such a qualified entity, and recommends that the newly defined term be used wherever reference to a Qualified Nonprofit Organization or tenant organization is made. Commenter (1) provided the proposed new definition below:

"Qualified Entity--any entity permitted under §42(i)(7)(B) of the Code and any entity controlled by such a qualified entity."

STAFF RESPONSE: Staff agreed with the definition as proposed. Staff also recommended amending the current definition of Right of First Refusal under §10.3, Subchapter A, Definitions as reflected below:

"Right of First Refusal--An Agreement to provide a right to purchase the Property to a Qualified Entity with priority to that of any other buyer at a price whose formula is prescribed in the LURA."

COMMENT SUMMARY: Commenter (1) provided comment and suggested amended language to §10.407 intended to assist the Department with implementing HB 3576, relating to entities that can acquire under the Right of First Refusal (ROFR) process. Commenter (1) indicates that changes made to the ROFR are based upon the fundamental understanding that the statutory changes applies to transfer of any ROFR property with an allocation of LIHTC before, on, or after the effective date of the act. Therefore, certain provisions of HB 3576 should apply to all LIHTC properties with a ROFR currently in existence. Commenter (1) proposed the following revised language for §10.407:

"(a) General. This section applies to Development Owners that agreed to offer a Right of First Refusal (ROFR) to a Qualified Entity, as memorialized in the applicable LURA. 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.

The Development Owner may market the Property for sale and sell the Property to a Qualified Entity without going through the ROFR process outlined in this section.

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 conflict between the LURA and statute exists the Development Owner may request a LURA amendment to be consistent with any changes to Texas Government Code §2306.

If a LURA includes the ROFR provision, the Development Owner may not request a Preliminary Qualified Contract (if such opportunity is available under §10.408) until the requirements outlined in this section have been satisfied.

The Department reviews and approves all ownership transfers pursuant to §10.405. Thus, if a proposed purchaser is identified in the ROFR process, the Development Owner and proposed purchaser must complete the ownership transfer process. A Development Owner may not transfer a Development to a Qualified Entity that is considered an ineligible entity under the Department's rules. In addition, ownership transfers to a Qualified Entity pursuant to the ROFR process are subject to Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews).

Satisfying the ROFR requirement does not terminate the LURA or the ongoing application of the ROFR requirement to any subsequent Development Owner.

The ROFR process is not triggered if a Development Owner seeks to transfer the Development to a newly formed entity:

that is under common control with the Development Owner; and

the primary purpose of the formation of which is to facilitate the financing of the rehabilitation of the development using assistance administered through a state financing program.

(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:

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;

Minimum Purchase Price, pursuant to §42(i)(7)(B) of the Code, is the sum of:

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

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:

upon the Development Owner's determination to sell the Development to an entity other than a Qualified Entity or pursuant to subpart (a)(6) above, the Development Owner shall provide a notice of intent to the Department, to the residents, and to such other parties as the Department may direct at that time. If the LURA identifies a Qualified Entity that has a contractual ROFR to purchase the Development, the Development Owner must identify that entity to the Department and first offer the Property to this entity. If the Qualified Entity does not purchase the Property, this denial of offer must be in writing and submitted to the Department along with the ROFR Fee. The Department will determine from this documentation whether the ROFR requirement has been met and will notify the Development Owner of its determination in writing. In the event that the Qualified Entity with the contractual ROFR is not operating or in existence at the time the Development Owner intends to sell, the provisions of this Section shall apply to any proposed sale by the Development Owner;

documentation verifying the ROFR offer price of the Property:

if the Development Owner receives an offer to purchase the Property from any buyer other than a Qualified Entity 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

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

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;

description of the Property, including all amenities and current zoning requirements;

copies of all documents imposing income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Property;

copy of the most current title report, commitment or policy in the Development Owner's possession;

the most recent Physical Needs Assessment, pursuant to Texas Government Code conducted by a Third-Party;

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);

the three (3) most recent consecutive audited annual operating statements, if available;

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);

current and complete rent roll for the entire Property;

if any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases; and

ROFR fee as identified in §10.901 of this chapter (relating to Fee Schedule).

(d) Process. Within 30 business days of receipt of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies. During that time, the Department will notify any Qualified Entity identified by the Development Owner as having a contractual ROFR of the Development Owner's intent to sell. 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 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 Entity, the Development Owner may accept back up offers. To satisfy the ROFR requirement, the Development Owner may sell the Property to the Qualified Entity 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 90 day ROFR posting period, within 90 days from the date listed on the website, the process as identified in subparagraphs (A) - (D) of this paragraph shall be followed:

if a bona fide offer from a Qualified Entity 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;

if a bona fide offer from a Qualified Entity is received at or above the posted ROFR offer price and the Development Owner accepts the offer, and the Qualified Entity 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 Chapter 1, Subchapter C of this part, the ROFR requirement will be deemed met so long as no other acceptable offers have been timely received;

if an offer from a Qualified Entity 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 90 day period;

request a Preliminary Qualified Contract (if such opportunity is available under §10.408) or proceed with the sale to an entity that is not a Qualified Entity 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 no more than 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 negotiate or enter into an agreement to sell the Development only with the parties listed, and in order of priority:

during the first six (6) month period after notice of intent, only with a Qualified Entity that is also a Community Housing Development Organization, as defined in the HOME Final Rule and is approved by the Department;

during the second six (6) month period after notice of intent, only with a Qualified Entity that is a Qualified Nonprofit Organization or a tenant organization;

during the second year after notice of intent, only with the Department or with a Qualified Entity approved by the Department;

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

upon expiration of the two (2) year period, if no Minimum Purchase Price offers were received from a Qualified Entity 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 request a Preliminary Qualified Contract (if such opportunity is available under §10.408 or proceed with the sale to a buyer that is not a Qualified Entity at or above the Minimum Purchase Price.

(3) if the Development Owner has a LURA or has amended the LURA to require a 180 day ROFR posting period pursuant to Texas Government Code §2306.6725, as amended, and the Development Owner intends to sell the Property at any time after the expiration of the Compliance Period, the notice of intent shall be given to the Department as described in this section. The 180 day ROFR period referenced in this paragraph begins when the Department has received and approval all documentation required under subsection (c)(1) - (12) of this section. During the 180 days following the notice of intent and in order to satisfy the ROFR requirement of the LURA, the Development Owner may negotiate or enter into an agreement to sell the Development only with the parties listed, and in order of priority:

during the first 60 day period after notice of intent, only with a Community Housing Development Organization, as defined in the HOME Final Rule, or with a Qualified Entity that is controlled by a Community Housing Development Organization, and is approved by the Department;

during the second 60 day period after notice of intent, only with a Qualified Nonprofit Organization as described by Texas Government Code §2306.6706, a Qualified Entity that is controlled by a Qualified Nonprofit Organization as described by Texas Government Code §2306.6706, or a tenant organization, and is approved by the Department;

during the last sixty (60) day period after notice of intent, with any other Qualified Entity that is approved by the Department;

if, during the one hundred and eighty (180) day period, the Development Owner shall receive an offer to purchase the Development at a price that the Department determines to be reasonable 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 price that the Department determines to be reasonable 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 price that the Department determines to be reasonable in accordance with subsection (b)(2) of this section to the organization selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department; and

beginning on the 181st day after the date the Department posts notice of the Development Owner's intent to sell, if no offers at the Minimum Purchase Price were received from a Qualified Entity, 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 request a Preliminary Qualified Contract (if such opportunity is available under §10.408 or proceed with the sale to a buyer that is not a Qualified Entity at or above the Minimum Purchase Price;

this section applies only to a right of first refusal memorialized in the Department's LURA. This section does not authorize a modification of any other agreement between the Development Owner and a Qualified Entity.

If the LURA does not specify a required ROFR posting timeframe, or, is unclear on the required ROFR posting timeframe, and the required ROFR value is determined by the Minimum Purchase Price method, any Development that received a tax credit allocation prior to September 1, 1997 is required to post for a 90-day ROFR period and any Development that received a tax credit allocation on or after September 1, 1997 and until September 1, 2015 is required to post for a 2-year ROFR, unless the LURA is amended under §10.405(b), or after September 1, 2015

is required to post for a 180-day ROFR period as described in 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.

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 Award 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.

If the closing price is materially 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.

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:

the best interests of the residents of the Development;

the impact the decision would have on other Developments in the Department's portfolio;

the source of the data used as the basis for the Development Owner's appeal;

the rights of nonprofits under the ROFR;

any offers from an eligible nonprofit to purchase the Development; and

other factors as deemed relevant by the Executive Director."

STAFF RESPONSE: Staff agreed with the amended language as proposed.

BOARD RESPONSE TO ALL COMMENTS: Agreed with Staff's recommendations.

The Board approved the final order adopting the new sections on November 12, 2015.

STATUTORY AUTHORITY. The new sections were adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Specifically Texas Government Code §2306.141 gives the Department the authority to promulgate rules governing the administration of its housing programs. The proposed adoption affects no other code, article or statute.

§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 the determination 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) Tax Credit Amount. 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 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 must be approved 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 and 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 sufficient authority to sign on behalf of the Applicant in the form of a corporate resolution which indicates the sub-entity in Control consistent with the entity contemplated and described in the Application;

(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 Credit Underwriting 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).

(7) for Applications underwritten with a property tax exemption, documentation must be submitted in the form of a letter from an attorney identifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review. Additionally, any Development with a proposed Payment in Lieu of Taxes ("PILOT") agreement must provide evidence regarding the statutory basis for the PILOT and its terms.

(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) a confirmation letter from the Compliance Division evidencing receipt of the Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms pursuant to §10.607(a).

(2) Certifications required under paragraph (1)(B) and (C) of this subsection must not be older than one year 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 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 re-evaluated by the Department for a reduction of credit or change in conditions.

(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, any changes to the Development Site acreage between Application and Carryover must be addressed by written explanation or, as appropriate, in accordance with §10.405.

(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 or as otherwise specified in the applicable year's Qualified Allocation Plan, under §11.2, 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) - (6) of this subsection, along with all information outlined in the Post Award Activities Manual. Satisfaction of the 10 Percent Test will be contingent upon the submission of the items described in paragraphs (1) - (6) of this subsection as well as all other conditions placed upon the Application in the Commitment. Requests for extension will be reviewed on a case by case basis as addressed in §10.405(d) of this chapter and a point deduction evaluation will be completed in accordance with Texas Government Code §2306.6710(b)(2) and §11.9(f) of this title. Documentation to be submitted for the 10 Percent Test includes:

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

(2) evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site. The Development Site must be identical to the Development Site that was submitted at the time of Application submission. For purposes of this paragraph, any changes to the Development Site acreage between Application and 10 Percent Test must be addressed by written explanation or, as appropriate, in accordance with §10.405;

(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 or adversely impact the ability to acquire, develop, and operate as set forth in the Application. Copies of supporting documents may be required by the Department;

(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. Certifications required under this paragraph must not be older than one year from the date of the 10 Percent Test Documentation submission deadline; and

(5) a Certification from the lender and syndicator identifying all known Guarantors. If identified Guarantors have changed from the Guarantors or Principals identified at the time of Application, a non-material amendment must be requested by the Applicant in accordance with §10.405 of this subchapter, and the new Guarantors or Principals must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation Reviews).

(6) a Development Owner's preliminary construction schedule or statement showing the prospective construction loan closing date, construction start and end dates, prospective placed in service date for each building, and planned first year of the credit period.

(h) Construction Status Report. Within three (3) months of the 10 Percent Test submission 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's 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, for Developments receiving an award only from the Department's Direct Loan Programs, other documents setting forth the legal structure and ownership. If identified Guarantors or Principals of a Guarantor entity were not already identified as a Principal of the Owner, Developer, or Guarantor at the time of Application, a non-material amendment must be requested in accordance with §10.405 of this subchapter and the new Guarantors and all of its Principals, as applicable, must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation Reviews);

(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 Development Owner must request a copy of the HTC LURA as directed in the Post Award Activities Manual. The Department will draft a LURA for the Development Owner that will impose the income and rent restrictions identified in the Development's final underwriting report and other representations made in the Application, including but not limited to specific commitments to provide tenant services, to lease to Persons with Disabilities, and/or to provide specific amenities. After origination, the Department executed LURA and all exhibits and addendums will be sent to the Development Owner to execute and record in the real property records for the county in which the Development is located. 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. Electronically recorded LURAs provided to the Department will be acceptable in lieu of the original, recorded copy.

(j) Cost Certification (Competitive and Non-Competitive HTC, and related activities only). The Department conducts a feasibility analysis in accordance with §42(m)(2)(C)(i)(III) of the Code and 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 needed to complete the review. The Department reserves the right to request additional documents or certifications as it deems necessary or useful in the determination of the Development's eligibility for a final Housing Tax Credit allocation amount. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be sent to the syndicator.

(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) - (xxxv) of this subparagraph, and pursuant to the Post Award Activities Manual. If any item on this list is determined to be unclear, deficient, or inconsistent with the cost certification review completed by the Department, a Request for Information (RFI) will be sent to the Development Owner. 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) may be reported to the EARAC during any related party previous participation review conducted by the Department.

(i) Owner's Statement of Certification

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

(iii) Evidence of Qualified Nonprofit or CHDO Participation

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

(v) Development Team List

(vi) Development Summary with Architect's Certification

(vii) Development Change Documentation

(viii) As Built Survey

(ix) Closing Statement

(x) Title Policy

(xi) Title Policy Update

(xii) Placement in Service

(xiii) Evidence of Placement in Service

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

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

(xvi) Independent Auditor's Report

(xvii) Independent Auditor's Report of Bond Financing

(xviii) Development Cost Schedule

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

(xx) Additional Documentation of Offsite Costs

(xxi) Rent Schedule

(xxii) Utility Allowances

(xxiii) Annual Operating Expenses

(xxiv) 30 Year Rental Housing Operating Pro Forma

(xxv) Current Operating Statement

(xxvi) Current Rent Roll

(xxvii) Summary of Sources and Uses of Funds

(xxviii) Financing Narrative

(xxix) Final Limited Partnership Agreement

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

(xxxi) Architect's Certification of Fair Housing Requirements

(xxxii) Development Owner Assignment of Individual to Compliance Training

(xxxiii) TDHCA Compliance Training Certificate

(xxxiv) TDHCA Final Inspection Clearance Letter

(xxxv) 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 in the Corrective Action Period and/or with any uncorrected issues of noncompliance, outside of the Corrective Action Period, will not be issued IRS Form(s) 8609s until all events of noncompliance are corrected or otherwise approved by the Executive Award Review and Advisory Committee;

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

§10.405. 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) Once a Development receives a Commitment or Determination Notice, the Department expects the Development Owner to construct or rehabilitate, operate, and own the Development consistent with the representations in the Application. The Department must receive notification of any amendments to the Application. Regardless of development stage, the Board shall re-evaluate a Development that undergoes a material change, as identified in paragraph (3) of this subsec-

tion 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 or Competitive HTC Application, and may reallocate the credits to other Applicants on the waiting list.

(1) Requesting an amendment. The Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in §10.901(13) of this chapter (relating to Fee Schedule) in order to be received and processed by the Department. Department staff will evaluate the amendment request to determine if the change would affect an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection.

(2) Nonmaterial amendments. 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). Changes in Developers or Guarantors will be subject to Previous Participation requirements as further described in §10.204(13).

(3) Material amendments. Amendments considered material pursuant to paragraph (3) 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)). Material Amendment requests may be denied if the Board determines that the modification proposed in the amendment would materially alter the Development in a negative manner or would have adversely affected the selection of the Application in the Application Round. Material alteration of a Development includes, but is not limited to:

(A) a significant modification of the site plan;

(B) a modification of the number of units or bedroom mix of units;

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

(D) a reduction of 3 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 of at least 5 percent;

(G) 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);

(H) Significant increases in development costs or changes in financing that affect the Department's direct loan financing structure or result in reductions of credit and where either of such changes are not agreed to by the Applicant or Development Owner; or

(I) any other modification considered significant by the Board.

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

(5) This section shall be administered in a manner that is consistent with §42 of the Code. If a Development has any uncorrected issues of noncompliance outside of the Corrective Action Period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department prior to approving an amendment request unless otherwise approved by the Executive Award Review and Advisory Committee.

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

(A) for amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence 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 financial feasibility of the Development; and

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

(b) Amendments to the LURA. Department approval shall be required for any amendment to a LURA in accordance with this section. An amendment request shall be submitted in writing, containing a detailed explanation of the request, the reason the change is necessary, the good cause for the change, financial information if the change will result in any financial impact on the development, information related to whether the necessity of the amendment was reasonably foreseeable at the time of application, and other information as determined to be necessary by the Department, along with any applicable fee as identified in §10.901 of this chapter (relating to Fee Schedule). 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. LURAs will only be amended if non-compliance or outstanding payment is resolved to the satisfaction of the Department as provided in subsection (5) of this section. 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 paragraph (3) of this subsection must be followed.

(1) Non-Material Amendments. The Executive Director or designee may administratively approve all amendments not defined as Material Amendments pursuant to paragraph (2) below. 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.

(2) Material Amendments. The Board must consider and approve the following material amendments:

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

(B) changes to the income or rent restrictions;

(C) changes to the Target Population;

(D) substantive modifications in the scope of tenant services

(E) the removal of material participation by a HUB or Nonprofit Organization as further described in §10.406 of this subchapter;

(F) a change in the Right of First Refusal period as described in amended §2306.6725 of the Texas Government Code;

(G) any amendment deemed material by the Executive Director.

(3) Other Material Amendment Requirements. Prior to staff taking a recommendation to the Board for consideration, the following must take place:

(A) 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

(B) 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.

(4) Approval. Once the LURA Amendment has been approved administratively or by the Board, as applicable, Department staff will provide the Development Owner with a LURA amendment for execution and recordation in the county where the Development is located."

(c) Amendments to Direct Loan Terms. The Executive Director or authorized designee may approve amendments to loan terms prior to closing as described in paragraphs (1) - (6) of this subsection. Board approval is necessary for any other changes prior to closing.

(1) extensions of up to 15 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 12 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.

(7) An Applicant may request a change to the terms of a loan. Requests for changes to the loan post closing will be processed as loan modifications and may require additional approval by the Department's Asset Management Division. Post closing loan modifications requiring changes in the Department's loan terms, lien priority, or amounts (other than in the event of a payoff) will generally only be considered as part of a Department or Asset Management Division work out arrangement or other condition intended to mitigate financial risk and 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.

(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 and a completed Ownership Transfer packet, if applicable, to the Department at least forty-five

(45) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.

(b) Exceptions. The following exceptions to the ownership transfer process outlined herein apply:

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

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible by submission of an Ownership Transfer packet, due to the sensitive timing and nature of this decision.

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

(4) Changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the same resulting owner do not require advance approval but must be reported to the Department as soon as possible, due to the sensitive timing and nature of the decision.

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §10.202 of Subchapter C (relating to Eligible Applicants). In addition, Principals will be reviewed in accordance with Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews).

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

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

(d) Transfer Actions Warranting Debarment. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure or the Department at risk for financial exposure as a result of non-compliance, staff 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 Chapter 1, Subchapter C of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(e) Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) an Applicant may request an amendment to its ownership structure to add Principals. The party(ies) reflected in the Application as having control must remain in the ownership structure and retain such control, unless approved otherwise by the Board. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their control prior to the issuance of 8609s.

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

(1) If the LURA requires ownership or material participation in ownership by a Qualified 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 and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization or CHDO, 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 nonprofit organization or CHDO, as applicable, that complies with the LURA.

(3) Exceptions to the above may be made on a case by case basis if the Development is past its Compliance Period, was not reported to the IRS as part of the Department's Non-Profit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this chapter (relating to LURA Amendments that require Board Approval). The Board must find that:

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

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

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

(g) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner, (ii) determines to sell its ownership interest or (iii) determines to maintain its ownership interest but is unable to maintain its HUB status, in either case, after the issuance of 8609's, the purchaser of that general partnership interest or the general partner is not required to be a HUB as long as the LURA does not require such continual ownership, or the procedures outlined in §10.405(b)(1) - (5) of this chapter (relating to LURA Amendments that require Board Approval) have been followed and 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 or is being removed as the result of a default under the organizational documents of the Development Owner;

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

(3) the proposed purchaser meets the Department's standards for ownership transfers

(h) 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 must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

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

(2) ownership transfer information, including but not limited to the type of sale, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §10.204(13)(A) of Subchapter C;

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

(5) Previous Participation information for any new Principal as described in §10.204(13)(B) of Subchapter C;

(6) agreements among parties associated with the transfer;

(7) a fully executed Owner's Certification of Agreement to Comply with the LURA, which may be subject to recording as required by the Department;

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

(9) detailed information describing the organizational structure, experience, and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

(10) evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 30 calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired;

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

(i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §10.202 of Subchapter C (relating to ineligible applicants and applications).

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

(1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(k) Penalties, Past Due Fees and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties or fees imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department. In the event a transferring Development has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PCA, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer.

(l) 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 Development Owners that agreed to offer a Right of First Refusal ("ROFR") to a Qualified Entity, as memorialized in the applicable LURA. The purpose of this section is to provide administrative procedures and guidance on the process and valuation of properties under the LURA. All requests for ROFR submitted to the Department, regardless of existing regulations, must adhere to this process.

(1) The Development Owner may market the Property for sale and sell the Property to a Qualified Entity without going through the ROFR process outlined in this section.

(2) A ROFR request must be made in accordance with the LURA for the Development. If there is a conflict between the Development's LURA and this subchapter, requirements in the LURA supersede the subchapter. If a conflict between the LURA and statute exists the Development Owner may request a LURA amendment to be consistent with any changes to Texas Government Code Chapter 2306.

(3) If a LURA includes the ROFR provision, the Development Owner may not request a Preliminary Qualified Contract (if such opportunity is available under §10.408) until the requirements outlined in this section have been satisfied.

(4) The Department reviews and approves all ownership transfers pursuant to §10.406. Thus, if a proposed purchaser is identified in the ROFR process, the Development Owner and proposed purchaser must complete the ownership transfer process. A Development Owner may not transfer a Development to a Qualified Entity that is considered an ineligible entity under the Department's rules. In addition, ownership transfers to a Qualified Entity pursuant to the ROFR process are subject to Chapter 1, Subchapter C of this title (relating to Previous Participation Reviews).

(5) Satisfying the ROFR requirement does not terminate the LURA or the ongoing application of the ROFR requirement to any subsequent Development Owner.

(6) The ROFR process is not triggered if a Development Owner seeks to transfer the Development to a newly formed entity:

(A) that is under common control with the Development Owner; and

(B) the primary purpose of the formation of which is to facilitate the financing of the rehabilitation of the development using assistance administered through a state financing program.

(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 Entity or pursuant to subpart (a)(6) above, the Development Owner shall provide a notice of intent to the Department, to the residents, and to such other parties as the Department may direct at that time. If the LURA identifies a Qualified Entity that has a contractual ROFR to purchase the Development, the Development Owner must identify that entity to the Department and first offer the Property to this entity. If the Qualified Entity does not purchase the Property, this denial of offer must be in writing and submitted to the Department along with the ROFR Fee. The Department will determine from this documentation whether the ROFR requirement has been met and will notify the Development Owner of its determination in writing. In the event that the Qualified Entity with the contractual ROFR is not operating or in existence at the time the Development Owner intends to sell the provisions of this Section shall apply to any proposed sale by the Development Owner;

(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 Entity 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 conducted by a Third-Party;

(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 30 business days of receipt of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies. During that time, the Department will notify any Qualified Entity identified by the Development Owner as having a contractual ROFR of the Development Owner's intent to sell. 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 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 Entity, the Development Owner may accept back up offers. To satisfy the ROFR requirement, the Development Owner may sell the Property to the Qualified Entity 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 90 day ROFR posting period, within 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 Entity 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 Entity is received at or above the posted ROFR offer price and the Development Owner accepts the offer, and the Qualified Entity 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 Chapter 1, Subchapter C 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 Qualified Entity 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 90 day period;

(D) request a Preliminary Qualified Contract (if such opportunity is available under §10.408) or proceed with the sale to an entity that is not a Qualified Entity 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 no more than 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 negotiate or 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 Entity 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 Entity or a tenant organization;

(C) during the second year after notice of intent, only with the Department or with a Qualified Entity 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 Entity 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 request a Preliminary Qualified Contract (if such opportunity is available under §10.408) or proceed with the sale to a buyer that is not a Qualified Entity at or above the Minimum Purchase Price.

(3) if the Development Owner has a LURA or has amended the LURA to require a 180 day ROFR posting period pursuant to Texas Government Code §2306.6725, as amended, and the Development Owner intends to sell the Property at any time after the expiration of the Compliance Period, the notice of intent shall be given to the Department as described in this section. The 180 day ROFR period referenced in this paragraph begins when the Department has received and approval all documentation required under subsection (c)(1) - (12) of this section. During the 180 days following the notice of intent and in order to satisfy the ROFR requirement of the LURA, the Development Owner may negotiate or enter into an agreement to sell the Development only with the parties listed, and in order of priority:

(A) during the first 60 day period after notice of intent, only with a Community Housing Development Organization, as defined in the HOME Final Rule, or with a Qualified Entity that is controlled by a Community Housing Development Organization, and is approved by the Department;

(B) during the second 60 day period after notice of intent, only with a Qualified Nonprofit Organization as described by Texas Government Code §2306.6706, a Qualified Entity that is controlled by a Qualified Nonprofit Organization as described by Texas Government Code §2306.6706, or a tenant organization, and is approved by the Department;

(C) during the last sixty (60) day period after notice of intent, with any other Qualified Entity that is approved by the Department;

(D) if, during the one hundred and eighty (180) day period, the Development Owner shall receive an offer to purchase the Development at a price that the Department determines to be reasonable 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 re-

ceive more than one offer to purchase the Development at or above the price that the Department determines to be reasonable 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 price that the Department determines to be reasonable in accordance with subsection (b)(2) of this section to the organization selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department; and

(E) beginning on the 181st day after the date the Department posts notice of the Development Owner's intent to sell, if no offers at the Minimum Purchase Price were received from a Qualified Entity, 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 request a Preliminary Qualified Contract (if such opportunity is available under §10.408) or proceed with the sale to a buyer that is not a Qualified Entity at or above the Minimum Purchase Price;

(F) this section applies only to a right of first refusal memorialized in the Department's LURA. This section does not authorize a modification of any other agreement between the Development Owner and a Qualified Entity.

(4) If the LURA does not specify a required ROFR posting timeframe, or, is unclear on the required ROFR posting timeframe, and the required ROFR value is determined by the Minimum Purchase Price method, any Development that received a tax credit allocation prior to September 1, 1997 is required to post for a 90-day ROFR period and any Development that received a tax credit allocation on or after September 1, 1997 and until September 1, 2015 is required to post for a 2-year ROFR, unless the LURA is amended under §10.405(b), or after September 1, 2015 is required to post for a 180-day ROFR period as described in 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 Award 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 materially 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.

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 December 17, 2015.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: September 25, 2015
For further information, please call: (512) 475-2109

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SUBCHAPTER G. FEE SCHEDULE, APPEALS AND OTHER PROVISIONS

10 TAC §§10.901 - 10.904

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter G §§10.901 - 10.904, concerning Fee Schedule, Appeals and Other Provisions, without changes to the proposed text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6462) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 25, 2015 and October 15, 2015. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 12, 2015.

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

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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10 TAC §§10.901 - 10.904

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 10 Uniform Multifamily Rules, Subchapter G, §§10.901 - 10.904 concerning Fee Schedule, Appeals and Other Provisions. Sections 10.901 - 10.904 are adopted without changes to text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6462) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the sections will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the proposed Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 15, 2015, with comments received from (51) Texas Association of Community Development Corporations.

1. §10.901(3) - Subchapter G - Application Fee (51)

COMMENT SUMMARY: Commenter (51) opposed the changed language for nonprofit organizations from "will receive a discount of 10%" to "may be eligible to receive a discount of 10%" on the basis that as previously stated it provides a small, but meaningful incentive to nonprofit developers.

STAFF RESPONSE: The current proposed language does not affect a nonprofit's ability to request and receive a 10% reduction in the application fee, provided that documentation is submitted that affirms the CHDO or nonprofit status. Staff recommended no change based on these comments.

BOARD RESPONSE: Accepted staff's recommendation.

The Board approved the final order adopting the new sections on November 12, 2015.

INDEX OF COMMENTERS

(51) Texas Association of Community Development Corporations.

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

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 11. HOUSING TAX CREDIT PROGRAM QUALIFIED ALLOCATION PLAN

10 TAC §§11.1 - 11.10

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 11, §§11.1 - 11.10, concerning the 2015 Housing Tax Credit Program Qualified Allocation Plan, without changes to the proposed text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6466) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the repeal will replace the sections with a new QAP applicable to the 2016 application cycle.

The Department accepted public comments between September 25, 2015 and October 15, 2015. Comments regarding the repeal sections were accepted in writing and by fax. No comments were received concerning the repeal section.

The Board approved the final order adopting the repeal section on November 12, 2015.

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

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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Timothy K. Irvine
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Texas Department of Housing and Community Affairs
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10 TAC §§11.1 - 11.10

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 11, §§11.1 - 11.10 concerning the Housing Tax Credit Program Qualified Allocation Plan. Sections 11.2, 11.4, 11.6, 11.7, and 11.9 are adopted with changes to text as published in the September 25, 2015 issue of the *Texas Register* (40 TexReg 6466). Sections 11.1, 11.3, 11.5, 11.8, and 11.10 are adopted without change to text as published in the September 25, 2015 issue of the *Texas Register* (40 TexReg 6466) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the rule will result in a more consistent approach to governing multifamily activity and to the awarding of multifamily funding or assistance through the Department while minimizing repetition among the programs. The comments and responses include both administrative clarifications and revisions to the Housing Tax Credit Program Qualified Allocation Plan based on the comments received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the Draft Housing Tax Credit Program Qualified Allocation Plan as presented to the Board in September, such changes are indicated.

Public comments were accepted through October 15, 2015, with comments received from (1) Foundation Communities, (2) Don Zimmerman, Austin City Councilman, (3) Texas Affiliation of Affordable Housing Providers, (4) Alyssa Carpenter, (5) Palladium USA, (6) Chris Boone, City of Beaumont, (7) Rural Rental Housing Association of Texas, (8) Fountainhead Management, Inc., (9) Dennis Hoover, (10) Houston LISC, (11) Alan Warrick, San Antonio City Councilman, (12) Ivy Taylor, Mayor of San Antonio, (13) Pedro Martinez, San Antonio Independent School District, (14) United Way of San Antonio, (15) Congressman Lloyd Doggett, (16) VIA Metropolitan Transit San Antonio, (17) San Antonio Housing Authority, (18) Tommy Calvert, Bexar County Commissioner, (19) R.L. "Bobby" Bowling IV, (20) Brad McMurray, (21) Structure Development, (22) Cynthia Bast, Lock Lord, (23) New Hope Housing, (24) Mary Henderson, (25) Vecino Group, (26) Daniel & Beshara, P.C., (27) Brownstone Affordable Housing, (28) Arx Advantage, LLC, (29) Hettig-Kahn, (30) Housing Lab by BETCO, (31) Marque Real Estate Consultants, (32) Texas Appleseed/Texas Low Income Housing Information Service, (33) Casa Linda Development Corporation, (34) Barry Palmer, Coats Rose, (35) Scott Marks, Coats Rose, (36) Texas Coalition of Affordable Developers, (37) Terri Anderson, (38) National Housing Trust, (39) Darrell Jack, (40) Madhouse Development Services, (41) Judy Telge, Coastal Bend Center for Independent Living, (42) Motivation Education & Training, et al., (43) Kim Schwimmer, (44) Christopher Myers, (45) Pedcor Investments, (46) Jen Joyce Brewerton, Dominium, (47) Jessica Perez, Capstone Management, (48) M Group, (49) National Church Residences, (50) DMA Development Company, (51) Texas Association of Community Development Corporations, (52) Cayetano Housing, (53) Disability Rights Texas, (54) Easter Seals Central Texas, (55) Eduardo Requena, (56) Ines Medrano, (57) Jannathan Fam, (58) John McMillian, (59) Mimay Phim, (60) Portia Haggerty, (61) Thy Phamnguyen, (62) Wanda Posteal, (63) Deborah Thompson, Wells Branch Neighborhood Association, (64) Wendell Dunlap, Mayor of Plainview, (65) Christopher Fielder, Mayor of Leander, (66) Roxanne Johnston, City of Big Spring, (67) Tracy Cox, City of San Augustine, (68) Jason Weger, Cisco City Councilman, (69) Tim Barton, Cisco ISD, (70) Suzonne Franks, (71) James King, Mayor of Cisco, (72) Cisco Economic Development Corporation, (73) Wilks Brothers, LLC, (74) Michael Cary, Prosperity Bank, Cisco, (75) Myrtle Wilks Community Center, (76) Patrick Hoiby, Equify, LLC, (77) Breckenridge Exploration Co., Inc., (78) Board of Trustees, Cisco ISD, (79) Cisco Chief of Police, (80) Tammy Osborne, City of Cisco, (81) Cisco Chamber of Commerce, (82) Phil Green, Cisco City Councilman, (83) Keep Cisco Beautiful Organization, (84) Peggy Ledbetter, Interim Cisco City Manager, (85) Tammy Douglas, Cisco City Councilwoman, (86) Matt Johnson, Cisco Post Master, (87) Russell Thomason, Criminal District Attorney, (88) Dennis Campbell, Cisco City Councilman, (89) Columbia Residential, (90) Jill Rafferty, Studewood Community Initiative, (91) Monica Washburn, (92) State Representative Ryan Guillen

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

1. §11 - General Comment (35), (90)

COMMENT SUMMARY: Commenter (35) indicated that by further compressing the above-the-line scoring items such that the maximum points for financial feasibility are only 13 points and a State Representative letter is worth only 4 points, the Department can amplify the effect of below-the-line scoring items such as the Underserved Areas. Such point modifications, according to commenter (35) could offset the trump card of NIMBYs that play out during the application cycle. Furthermore, commenter (35) proposed that negative QCP letters could also lead to deducting fewer points and suggested a deduction of 2 points. The suggested scoring matrix proposed by commenter (35) is located in the public comment supplement included in this presentation.

Commenter (90) asserted that the recommendations submitted by city and county planning departments and nonprofit housing organizations on the QAP over the past several years seek to facilitate the approval of future projects and not to develop consistent application of fair housing guidelines. Commenter (90) contended that the modifications to the QAP over the years have reached the point where little objective analysis is required and the use of algorithms or other objective data analysis tools for the review of proposed sites have been eliminated. Commenter (90) further maintained that the Department ought to formulate consistent fair lending guides rather than pandering to the momentary needs of project developers.

STAFF RESPONSE: In response to commenter (35) staff believed that the legislative priorities, as set out in statute, are more appropriately addressed by the proposed rule rather than by the changes suggested in these comments. In particular, changing the point value as suggested by the commenter would negatively affect the correlation between the statute and the rule. Moreover, staff believed the extent of the changes to the nature of the proposed rule suggested by the commenter would require renew-

ing the rule-making process and re-publication prior to adoption. Staff recommended no changes based on these comments.

BOARD RESPONSE: Accepted Staff's recommendation.

2. §11.1(e) - Census Data (63)

COMMENT SUMMARY: Commenter (63) requested that the census data for surrounding areas within a ZIP code be taken into consideration as opposed to the use of data from individual census tracts, further stating that expanding the information gathered to include an entire ZIP code will allow all concerned a more comprehensive view of demographics and impact on a community as a whole.

STAFF RESPONSE: Staff appreciated the comment; however, much of the demographic data available to the Department is more reliable on a census tract level compared to ZIP codes because census data is collected on a census tract basis and ZIP codes do not always follow census tract boundaries. Moreover, to make such a change would be a significant modification in numerous areas of the rules associated with the evaluation process not identified by the general comment expressed. Staff recommended no changes based on these comments.

BOARD RESPONSE: Accepted Staff's recommendation.

3. §11.2 - Program Calendar (22), (32)

COMMENT SUMMARY: Commenter (22) suggested the deadline for submission of the 10% test be consistent with the date noted under §10.402(g) of the Uniform Multifamily Rules. Commenter (32) expressed support for the proposed due date for the local government and state representative letters.

STAFF RESPONSE: In response to commenter (22), staff modified the date in the program calendar accordingly and appreciated the support as expressed by commenter (32).

BOARD RESPONSE: Accepted Staff's recommendation.

4. §11.3 - Housing De-concentration Factors (32), (38), (45)

COMMENT SUMMARY: Commenter (38) expressed general support for the exemptions allowed for preservation developments under some of the de-concentration requirements. As it relates to the Limitations on Developments in Certain Census Tracts de-concentration factor, commenter (32) disagreed with the proposed language which allows local jurisdictions to essentially waive the limitation on adding HTC units into a neighborhood where the existing HTC units makes up 1 in 5 of the housing units in the jurisdiction. Commenter (32) illustrated that in 2015 only 115 of the state's 5,265 census tracts fell into this limitation and further commentated that those neighborhoods are the most egregious examples of over-concentration of HTC units. To make this limitation meaningful, commenter (32) requested the 20% be a meaningful, hard cap and to lower the waivable cap to 10%. Commenter (45) advocated that the provision of the additional phase rule in this section unnecessarily delays putting units on the ground at otherwise eligible sites and further contended that any evaluation of a proposed site is going to somehow include adjacent sites, no matter the distance, and that they will be evaluated for demand based on factors already provided in the rule (i.e. de-concentration, undesirable characteristics and feasibility). Commenter (45) recommended the additional phase rule be removed.

STAFF RESPONSE: Staff appreciated the support expressed by commenter (38). In response to commenter (32), staff believed that in order to maintain consistency with other rule requirements regarding de-concentration, the proposed rule more appropriately addresses de-concentration goals than the changes suggested in these comments. Moreover, staff believed the extent of the changes to the nature of the proposed rule suggested by the commenter would require renewing the rule-making process and re-publication prior to adoption. In response to commenter (45) this provision has been a long-standing policy of the Department which is associated with limitations on development size and the impact of sudden concentration without phased demonstration of demand. In addition, it would encourage the acquisition of sites that may be larger than necessary for any subject application to effectively bank land. Staff recommended no changes based on these comments.

BOARD RESPONSE: Accepted Staff's recommendation.

5. §11.4(b) - Maximum Request Limit (3), (7), (45)

COMMENT SUMMARY: Commenter (3), (7) requested a new credit cap for USDA applications of $750,000 based on the belief that most of these developments are small and therefore such cap is appropriate. Commenter (45) requested clarification regarding request limits for elderly developments in those regions prescribed under HB 3311 and proposed that those requests should be treated the same as those requests that might exceed the overall limit. Commenter (45) recommended the following modification "for any given Development, an Applicant may not request more than 150 percent of the credit amount available in the sub-region based on estimates released by the Department on December 1, or $1,500,000, whichever is less, or $2,000,000 for Applications under the At-Risk Set-Aside. For Elderly Developments in an urban Uniform State Service Regions containing a county with a population that exceeds one million, the request may not exceed the final amount published in the Site Demographic Characteristics Report after the release of the Internal Revenue Service ("IRS") notice regarding the 2016 credit ceiling. For all Applications, the Department will consider the amount in the Funding Request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than $2 million in a single Application Round. (§2306.6711(b))"

STAFF RESPONSE: In response to commenter (3), (7) staff believed that the legislative requirements as set out in statute are more appropriately addressed by the proposed rule than by the changes suggested in this comment. In particular, the Maximum Request Limit has been established by statute and setting a cap for applications in the USDA set-aside is not consistent with statute. Moreover, staff believed the extent of the changes to the nature of the proposed rule suggested by the commenter would require renewing the rule-making process and re-publication prior to adoption. In further response to commenter (7) regarding the farm worker housing application submitted, if farm worker housing receives funds from USDA to be eligible for the USDA set-aside, staff does not recommend that the Board de-prioritize farm worker housing under this set-aside at this time. This may be discussed and considered in developing the next QAP. In response to commenter (45) staff agreed and changed the rule accordingly with a slight modification regarding where the information will be published: "For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the

sub-region based on estimates released by the Department on December 1, or $1,500,000, whichever is less, or $2,000,000 for Applications under the At-Risk Set-Aside. For Elderly Developments in an urban Uniform State Service Regions containing a county with a population that exceeds one million, the request may not exceed the final amount published on the Department's website after the release of the Internal Revenue Service notice regarding the 2016 credit ceiling. For all Applications, the Department will consider the amount in the Funding Request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than $2 million in a single Application Round. (§2306.6711(b))"

BOARD RESPONSE: Staff proposed a change to this section at the Board meeting that clarified the previously included additional limitation on elderly developments. The word "urban" was removed to be consistent with the language in the statute and the words "in addition" were added to reflect that this limitation is in addition to the limitation in the preceding sentence. The revised language is as follows: "For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the sub-region based on estimates released by the Department on December 1, or $1,500,000, whichever is less, or $2,000,000 for Applications under the At-Risk Set-Aside. In addition, for Elderly Developments in a Uniform State Service Region containing a county with a population that exceeds one million, the request may not exceed the final amount published on the Department's website after the release of the Internal Revenue Service notice regarding the 2016 credit ceiling. For all Applications, the Department will consider the amount in the Funding Request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than $2 million in a single Application Round. (§2306.6711(b))" The Board accepted staff's recommendation.

6. §11.4(c) - Increase in Eligible Basis (3), (22), (32), (36), (45)

COMMENT SUMMARY: Commenter (3) requested paragraph (2) relating to the boost for small area DDAs be deleted in its entirety stating that such provision only allows the boost when the certificate of reservation is received in the same year as the small area DDA designation. Commenter (3) stated that because such designations are subject to change annually, the site may no longer have the designation the following year and stated that the proposed language forces a 4% HTC application that receives a certificate of reservation after the mid-August collapse to close before the end of the calendar year further compressing the 150-day timeline associated with the reservation. Similarly, commenter (22) suggested subparagraphs (1) and (2), relating to QCT and DDA designations respectively, be removed with the justification that the Department does not need to modify or expound upon the federal law that allows such increase in eligible basis, it should simply follow it. Commenter (36) requested the language relating to the boost for DDA areas be modified to include a definitive statement that such areas are eligible for the boost. Commenter (36) believed that the proposed language seems to imply that the applicant would need to prove that the boost is required, thus leaving doubt with the applicant on the Department's determination on the matter. Commenter (32), (45) expressed support for the inclusion of difficult to development areas.

STAFF RESPONSE: In response to commenter (3), the current language in the rule states the DDA designation would correspond with the year the Certificate of Reservation is issued, not that the transaction would have to close within the same calendar year. If the Certificate of Reservation is issued after the August collapse, the Department will underwrite including the 30% boost and the applicant will be allowed the full 150-days under the Certificate of Reservation by which to close which could be in the subsequent program year. In response to commenter (22) staff recognizes that Section 42 allows the boost but as with many other elements of Section 42, it leaves to the State allocating agency through its QAP the ability to determine what state policies may affect implementation. In this case, the inclusion of the SADDA in the rule provides additional clarification in the context of documentation required in the application and allows for DDA boost which has not been allowed in the QAP in the last few years. Staff appreciated the support expressed by commenter (32), (45). In response to commenter (36) the application would have to demonstrate that the boost is required for financial feasibility. The language in this section does not add anything new with regard to the determination of the need for the boost; however staff believed and the IRS confirmed with staff that such practice is consistent with Section 42 (m) in that despite being in an area that would otherwise qualify for the boost, the Department is required to allocate not more credits than are necessary to demonstrate financial feasibility. Staff did not recommend any changes based on these comments.

BOARD RESPONSE: Accepted Staff's recommendation.

7. §11.5(3) - Competitive HTC Set-Asides (7), (32), (38), (42)

COMMENT SUMMARY: Commenter (7) indicated that an application for farm worker housing in the 2015 application round, using USDA 514 funds for new construction is reasonable to compete within the other USDA set aside applicants, but requested that they be limited to $750,000, because the approximately $800,000 in credits associated with a 2015 application would have taken 26% of the available funds in the USDA set-aside. Commenter (7) believed that while farmworker housing is deserving, the reduction in the set-aside is unacceptable considering their goal of preserving USDA units. Commenter (7) recommended a limit of one new construction award from the USDA set-aside in each application cycle for the USDA 515 and 514/516 properties. For a future consideration, commenter (7) requested a minimum 10% of available funds be set-aside for USDA properties with consideration of a Department preservation policy and priority points reflecting rural preservation priorities. With respect to the At-Risk set-aside, other than USDA, commenter (7) supports a limitation of $1.5 million. Commenter (32), (42) expressed support for the language as proposed under the USDA Set-Aside. Commenter (42) further stated several reasons for prioritizing farmworker housing with scoring advantages which include the following: stabilizes the agricultural economy and agricultural workers in Texas with housing; brings more rental assistance and federal dollars to Texas; rental assistance synergizes LIHTC and allows LIHTC units to reach 30% AMI; rental assistance is lost with natural mortgage pay-offs when it should be a preservation tool; and rental assistance makes LIHTC units accessible to farmworkers. Commenter (42) noted that a 2012 Department study stated that 92.7% of farmworkers are not served by the 28

farmworker-designated developments in the 49 rural counties that were studied. Moreover, commenter (42) encouraged the Department to consider the recommendations in the study that were connected to the HTC program, in the development of the QAP. Commenter (38) expressed support for the 15% set-aside for at-risk developments and associated prioritization of the preservation and rehabilitation of existing multifamily housing.

STAFF RESPONSE: In response to commenter (3), (7) staff believed that the legislative requirements as set out in statute are more appropriately addressed by the proposed rule than by the changes suggested in this comment. In particular, the Maximum Request Limit has been established by statute and setting a cap for applications in the USDA set-aside is not consistent with statute. Moreover, the extent of the changes to the nature of the proposed rule suggested by the commenter would appear to require renewing the rule-making process and re-publication prior to adoption. In further response to commenter (7) regarding the farm worker housing application submitted, if farm worker housing receives funds from USDA to be eligible for the USDA set-aside. Staff does not believe it has the authority to de-prioritize or further prioritize farm worker housing under this set-aside without additional policy directive from the Board. Moreover, the extent of the changes to the nature of the proposed rule suggested by the commenter would appear to require renewing the rule-making process and re-publication prior to adoption. In response to commenter (42) staff believed this suggestion is a sufficiently substantive change from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2017 QAP. Staff appreciated the support expressed by commenter (38). Staff did not recommend any changes based on these comments.

BOARD RESPONSE: Accepted Staff's recommendation.

8. §11.6(3) - Award Recommendation Methodology (28), (32), (35), (45), (50)

COMMENT SUMMARY: Commenter (28), (35) asserted that the language in HB 3311 is clear in being directed at the sub-regions and further maintained that since the At-Risk set-aside does not differentiate between regions and sub-regions or rural and urban, it should be clear that the At-Risk set-aside should not be included in the formula that places a cap on the amount of credits attributed to elderly developments. Commenter (35), (49) similarly expressed that because the Department has traditionally disregarded subregions in allocating under the At-Risk set-aside, which has been stated in the QAP for a while, the legislative intent behind HB 3311 is that it should also not apply to the At-Risk set-aside. Commenter (49), (50) contended that the intent was not to apply the formula to the At-Risk set-aside which is funded before the regional allocation is funded and that the formula does not reflect the need of persons (senior or family) already housed in affordable units which may or may not be eligible for prepayment and in need of rehab. Commenter (50) advocated that this section be modified to reflect the following "(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. In Urban Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Texas Government Code, §2306.6711(h). These calculations will be published by the Department in the Site Demographics Characteristics Report (§2306.6711(h))."

Commenter (49) expressed that the intent of HB 3311 was not to be implemented in the preservation or At-Risk set-aside based on the following: the At-Risk set-aside is not subject to the subregional pool caps and thus is not subject to the elderly sub-regional cap; At-Risk developments do not increase the number of new low-income elderly units created; HB 3311 does not specify that the cap is to be applied to the At-Risk set-aside; At-Risk elderly and At-Risk general population developments have equal scoring so there is no extra incentive to preserve elderly over family; and by splitting the limited amount of funding under the formula, the State would be implementing the exact opposite of its intention of ensuring that seniors are provided access to affordable housing resources. Commenter (49) further contended that if the formula was to apply to the At-Risk set-aside it would have the exact opposite of the bill's intent by significantly reducing the dedicated senior tax credits and further asserted that "the bill would not have been passed if the intent was to stifle a community by blocking," such developments from accessing the resources needed to preserve these developments. Commenter (32) requested the Department make public the details of its calculations to implement HB 3311; specifically, identifying the HISTA variable names and definitions used. Commenter (32) noted that data presented to the legislature during discussions relating to HB 3311 used the relative elderly vs. non-elderly renter populations in the calculations to determine the regional cap. Should alternative methodology be used, commenter (32) believed it to be misleading considering what the legislature relied upon when adopting the language contained in the bill. Commenter (45) requested clarification regarding the maximum percentage of credits available for elderly development as it relates to returned credits. Assuming the calculation is based on awarded developments (not placed in service), commenter (45) believed that if credits are returned from a previous cycle, the amount of credits available to elderly applications should not be adjusted and that the credit returned should not be considered in subsequent calculations. The possibility of never-ending re-calculations based on returns, according to commenter (45), could create confusion and the potential for errors; therefore, a fixed maximum percentage at the beginning of cycle will ensure transparency and compliance with the statutory provision. Commenter (45) advocated for the following modification to the methodology under subparagraphs (C) and (E): "...In urban Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum amount of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. This includes any Applications awarded under subparagraph (B) of this paragraph. The Department will, for each such Urban subregion, calculate the maximum amount available for Elderly Developments in accordance with Texas Government Code, §2306.6711(h). These maximum amounts will be published by the Department in the Site Demographics Characteristics Report (§2306.6711(h)) and will be final, regardless of any returned credit from previous cycles, but may be exceeded only if necessary to comply with the nonprofit set-aside required by §42(h)(5) of the Code."

STAFF RESPONSE: In response to commenters (28), (35), (49) and (50), staff agreed and recommended that the credits made available under the "at risk" set-aside not be included in the competitive tax credits subject to the cap on elderly developments. This was based on the fact that only tax credits treated under the subregional set asides are allocated solely to covered subregions, and the credits in the "at risk" set aside are available statewide. The proposed modification included the following: "(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. In Urban Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Texas Government Code, §2306.6711(h) and will publish such percentages on its website....and "(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. In urban Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Texas Government Code, §2306.6711(h) and will publish such percentages on its website. This process will continue until the funds remaining are insufficient to award the next highest scoring Application 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:..."

In response to commenter (32), staff has applied a plain language reading of the statute to determine that all elderly households will be used in the denominator of the formula to calculate the percentage of credits that will be available for elderly developments in the impacted regions. When the percentages are published, staff can include the HISTA variable names and Place names. Staff agreed with commenter (45) regarding how credit returns from a previous cycle should be treated. The return of credits in an affected subregion, associated with a large development, regardless of whether it was elderly or general, would have a de minimis (less than 0.1%) effect on the percentage. Staff does not believe a re-calculation of the maximum percentage would significantly change the amount of credits available and factored into the calculation.

BOARD RESPONSE: Accepted Staff's recommendation.

9. §11.6(5) - Competitive HTC Allocation Process - Force Majeure Events (1)

COMMENT SUMMARY: Commenter (1) stated that the greatest impact on the timing of a project's completion date are a series of compounding events, for example, a rainy month, a labor shortage, and a City's change in interpretation of specific development requirements. Commenter (1) requested staff consider that where there is the presence of three or more of the combined factors that has caused a project to push past their placed in service deadline, it be considered a force majeure event.

STAFF RESPONSE: The rule as written allows for multiple events to be considered in making a determination which staff will evaluate on a case by case basis. Staff did not recommend any changes based on this comment.

BOARD RESPONSE: Accepted Staff's recommendation.

10. §11.7 - Tie Breaker Factors (1), (3), (4), (7), (9), (21), (30), (31), (32), (36), (45)

COMMENT SUMMARY: Commenter (1) requested consideration for the addition of proximity to public transportation as a tie breaker. The choice between two really high opportunity urban areas should come down to the one that is most accessible to public transportation because it has a broader appeal to those residents living in urban areas, according to commenter (1). Commenter (3), (7), (9), (30), (31), (45) recommended the following modification to the fourth tie breaker on the basis that it will assist with the on-going de-concentration efforts: "(4) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit Development that serves the same population type. 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." Commenter (4), (31), (36) expressed concern over the third tie breaker that only comprehends one population type when there is a potential to have two tied applications serving two different populations. Commenter (4) asserted that since elderly and supportive housing developments are impacted by schools with regard to the opportunity index and educational excellence then the tie breaker should be considered for all developments. Commenter (4), (31), (36) recommended the following modification for the third tie breaker: "(3) The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site, or (for "choice" districts) the closest." Commenter (21) recommended that for the second tiebreaker the full and exact real number, as provided by the ACS, without rounding, be used and further cited the Departments Site Demographics Report which uses only one decimal place rather than the full number. Commenter (21) proposed the following modification: "(2) Applications proposed to be located in a census tract with the calculated lowest poverty rate, as published by the American Community Survey, as compared to another Application with the same score." Commenter (45) contended that very specific data regarding a site (i.e. poverty rate and school score) that is already incorporated into scoring and then again into the first tie breaker factor should not be given additional weight, but rather, other criteria outside of the opportunity index should be considered. Commenter (45) suggested the tie breaker factors relating to poverty rate and school score be removed and that should the Department choose to include additional factors, recommended the following, in the order of most appropriate: "(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) Applicants with a portfolio that has a compliance history in the lowest category as determined in accordance with 10 TAC §1.301, related to Previous Participation;

(3) Applications eligible for the highest number of points under §10.101(a)(2), relating to Mandatory Community Assets; (4) Applications in census tracts with the lowest percentage of Housing Tax Credit Units per household; (5) Applications with the highest combined scores for Local Government Support, commitment of Development Funding by Local Political Subdivision, Declared Disaster Area, Quantifiable Community Participation, community Support from State Representative, Input from Community Organizations, and Concerted Revitalization Plan under subsection §11.9(d) of this chapter (relating Competitive HTC Selection Criteria); (6) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development serving the same Target Population."

Commenter (32) expressed support for the changes proposed in this section and maintained that such changes prevent the over-reliance on the distance tiebreaker created by the lack of detail in the opportunity index.

STAFF RESPONSE: In response to commenter (1), proximity to public transportation can be an important factor for developments serving certain populations and is already included as an option under §10.101 (a) Mandatory Community Assets. In response to commenters (3), (7), (9), (30), (31), and (45), staff believed that concerns regarding concentration of housing are not based on targeted population. Moreover, this tiebreaker has to do with allocation of resources in a specific area. In response to commenters (4), (31), and (36), staff agreed that the limitation of tiebreaker (3) to general population developments is not appropriate. The item has been modified to remove the reference to type of development so that the tie breaker applies to all applications. In response to commenter (21), §11.1(e) already requires the use of census or American Community Survey ("ACS") data. The use of additional digits after the decimal will not create a meaningful measurement for the tie breaker, particularly when there are two other tie breakers to be applied. In response to commenter (45), the suggested changes to the tiebreakers are a significant change to the current structure, which has not been available for public comment. Further, regarding the suggestion to add the sponsors previous participation history as a tie breaker, this scoring item will be removed from the QAP for this year in response to multiple commenter concerns. Staff appreciated the support expressed by Commenter (32).

BOARD RESPONSE: Accepted Staff's recommendation.

11. §11.9(b)(2) - Selection Criteria - Previous Participation Compliance History (1), (3), (4), (19), (28), (30), (32), (34), (36), (45), (46), (48), (49), (50)

COMMENT SUMMARY: Commenter (1) expressed that points associated with compliance history is not good policy and further stated, along with commenter (30), (49), that instances where the ability to correct such a situation is completely out of the owner's control has no bearing on the quality of an owner's development or compliance ability. Commenter (30), (49), (50) indicated there are times when staff review exceeds the 90-day correction period deadline, requiring more information from the applicant and questioned whether this would impact the category designation. Commenter (1) recommended points for compliance history be removed and this scoring item reflect points only for HUB or nonprofit participation. Commenter (3), (30), (48) requested clarification with respect to the previous participation compliance history scoring item; specifically how an applicant would determine which category applies to them with commenter (28), (48) stating it will be difficult to determine what points to assign to this scoring item. Commenter (3), (30) recommended that the category of an applicant be tied to March 1, 2016 to provide clarity within the competitive round as it relates to scoring. Commenter (28) recommended the scoring item be somewhat like a pilot program for 2016 with the points not actually considered in the final score which would provide an opportunity to evaluate further for the 2017 application cycle. Commenter (46) suggested that it is not reasonable to ask an applicant to assess their own category standing since some compliance history less than 3 years old is not captured in the Department's monitoring system and further suggested that the Department should provide the applicant with their category designation in advance of the pre-application deadline. Moreover, commenter (46) suggested that assessing everyone's category designation will be an administrative burden on the Department if the right tools are not in place. Commenter (48) stated that correction of a finding out of state within the correction action period is not verifiable and they further questioned whether the Department could verify out of state non-corrected compliance findings. Commenter (19), (46) expressed support for a scoring item that rewards developers that have a track record of excellent performance; however, disagreed with the draft language which puts experienced developers with excellent track records in the same category of a developer with no record of performance in tax credit development. Such policy of ignoring good performance, according to commenter (19), runs contradictory to the private sector because an excellent record of performance is the most important factor to private lenders and investors. Commenter (19) recommended the following revision to this scoring item and further commented that for those applicants seeking to receive the point under (ii) having no track record, the rule allows for a partnership with an experienced developer and brings the policy in line with the private sector and what a bank or investor would be looking for before approving a proposal from an entity with no experience. "(i) The portfolio of the Applicant has a compliance history of a category 1 as determined in accordance with 10 TAC §1.301, related to Previous Participation (2 points); or (ii) The portfolio of the Applicant has a compliance history of a category 2 as determined in accordance with 10 TAC 1.301, related to Previous Participation (1 point)." Similarly, commenter (45) expressed support for this item and it remaining a determining factor in the awards made, but believed it could be given up to 4 points in weight asserting that the performance of developers and owners that participate in the program are paramount to its success and that it is meaningless to develop and own an HTC property and then operate it in a manner that does not adequately serve Texans in need of housing. Commenter (45) emphasized that this scoring item does not penalize out-of-state developers, it takes into consideration portfolio size, it does not penalize owners for having findings but only for not correcting those findings timely and it is generally concise and easy to understand. Commenter (45) contended that if the proposed language is revised, they would support a scoring item that awarded 2-4 points for Category 1 portfolios and 1-2 points for those with a Category 2 portfolio and would also support a scoring penalty (1 or 2 points) for those with a Category 3 or 4 portfolio, only because it would have the same impact. Moreover, a scoring item that took into account the compliance history of only the majority owner of the general partnership interest, so that owners with good compliance histories would still be motivated to partner with a non-profit or HUB that might have had some compliance issues in the past, would also garner support from commenter (45). Commenter (32) expressed support for this scoring item which they believe addresses applicants with a negative compliance history but does not discourage new entrants to the com-

petitive process. Commenter (32) suggested this scoring item be modified to state that the point is unavailable to any applicant with a portfolio that includes a relevant property that has failed to timely and completely file a Housing Sponsor Report in the last 3 years. Commenter (32) maintained that such Report provides important insight into the activities of existing properties but is not always submitted. Commenter (46) indicated the scoring item unfairly provides preference to out-of-state applicants without Department experience which appears to be the opposite of the intent of the item which is to reward strong developers with a strong compliance history. Commenter (34), (36), (47) requested the points associated with compliance history be removed from this scoring item and be revisited for the 2017 application cycle. If this point remains; however, commenter (47), (50) recommended that a Category 2 portfolio be removed from the list such that Category 1 or 2 applicants could still receive the additional point. Commenter (50) suggested that the Category 1 designation, for those with an extra large portfolio would require not a single issue of non-compliance not corrected within the corrective action period, which is almost impossible to achieve, especially considering that the Department's compliance staff often does not review the corrective action within the corrective action period. Moreover, commenter (47) suggested the category designation be tied to an applicant's previous participation history at the beginning of the 2016 application cycle and that any outstanding non-compliance that occurred before the beginning of cycle not be considered for the category designation. To that end, commenter (47) offered the following modification: "(B) Previous Participation Compliance History. The portfolio of the Applicant does not have compliance history of a category 3 or 4 as determined in accordance with 10 TAC §1.301, related to Previous Participation. This point category will be applicable to any events of noncompliance that are uncorrected or events of noncompliance that were not corrected during the corrective action period for the Applicant's previous participation history as of March 1, 2016. (1 point)" Commenter (4) asserted that points for compliance history is in essence double counting the review since previous participation is already contemplated during the award process and further contended that the ultimate goal of the previous participation was to require developers to fix any outstanding issues as a condition of award. Commenter (4) maintained that such process does not seem reasonable when the review and category designation appears to look back at issues that occurred prior to the implementation of the category system and which have to ability to correct. It was the recommendation of commenter (4) that this point item be deleted until applicants and staff have a better understanding of the category system and what is involved in the evaluation and that option (A) under this item be revised to reflect 2 points, instead of 1 point. Commenter (48) expressed concern over how to equitably reward points to all developers without competitive advantage to a select few since the proposed language can punish an applicant for a single event that was corrected but perhaps for reasons beyond the applicant's control, may not have been corrected during the corrective action period. Commenter (48) explained that a Category 2 portfolio, no matter how large, cannot have a single finding which is unfair to those who have a significant Texas only portfolio under review and further maintained that an uncorrected event should rise to the level of penalty loss of the competitive score, but not any single corrected event, regardless if corrected within or outside the corrective action period, especially if developers who operate outside Texas are not subject to the same compliance review. Commenter (48) suggested this item be removed for the 2016 application cycle or modified to reflect one of the following to ensure a reasonable standard for competition:"(B) Previous Participation Compliance History. The portfolio of the Applicant does not have compliance history of a category 3 or 4 as determined in accordance with 10 TAC §1.301, related to Previous Participation. (1 point) "(B) Previous Participation Compliance History. The portfolio of the Applicant does not have compliance history of any uncorrected findings within the last 3 years in accordance with 10 TAC §1.301, related to Previous Participation. (1 point)" With respect to subparagraph (A) under this scoring item, commenter (45) suggested the threshold percentage for the HUB or nonprofit partner participation be lowered from 80% for a combination of ownership interest, cash flow from operations and developer fee taken together to equal at least 50%, with no less than 5% in each category. Commenter (45) expressed that while some of these organizations have extensive experience, part of the purpose of the scoring item is to give more experience to organizations that have some but that still need partners.

STAFF RESPONSE: Staff carefully considered the volume of concern and conflicting comment regarding this scoring item. While the previous participation history will continue to be considered during the allocation process, staff recommended that the scoring item be excluded from this Qualified Allocation Plan and reevaluated as the 2017 rules are developed.

BOARD RESPONSE: Accepted Staff's recommendation.

12. §11.9(c)(2) and (c)(3) - Selection Criteria - Rent Levels of Tenants and Tenant Services (8), (45)

COMMENT SUMMARY: Commenter (45) suggested the additional points available to supportive housing developments under these two scoring items be removed on the basis that, by definition, these types of developments will require funding sources that will require the property serve particular populations which may result in additional units restricted at 30% AMI and/or provide additional services. Commenter (45) does not believe that in meeting the requirements associated with those funding sources, they should be allowed additional points under the QAP since the benefits of serving those populations are already realized through those sources. Commenter (45) recommended that perhaps only the highest scoring supportive housing development in any given region be allowed access to these additional points. As proposed, the QAP highly favors this type of development over those that serve general population or seniors. Moreover, commenter (45) argued that with developers of supportive housing seeking additional concessions in the QAP and Rules, as well as Direct Loan NOFA's being developed, they do not believe statute explicitly states that this type of housing should be a primary purpose of the Department. Commenter (8) asserted the proposed language for Rent Levels of Tenants fails to follow the legislative mandate by coupling rent levels with the status of the owner or other factors that could be more appropriate for another lower scoring aspect of the rule. Specifically, commenter (8) contends that the highest priority under this item is for those participating in the City of Houston's Permanent Supportive Housing program which is not an aspect of rent levels of tenants. Points that can be achieved that are based on additional factors that are already included in other lower scoring categories does not adhere to the plain language of statute, according to commenter (8). Moreover, given the statutory language, the legislature approved of lower rents; however, it is questionable as to whether the legislature intended for points to be given to developments that are increasing the rents of low income residents in order that even lower income

residents would have lower rents, which the proposed language allows. According to commenter (8) the Department should reward the development that is actually bringing something to the project that does not cause some tenants to pay more than is necessary by obtaining project based rental assistance for the 30% AMGI which is essentially robbing Peter to pay Paul. Commenter (8) suggested the following revision to this item: "(2) Rent Levels of Tenants. (§2306.6710(b)(1)(E)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. These levels are in addition to those committed under paragraph (1) of this subsection. At least 20% of all low-income Units at 30% or less of AMGI and the development has secured a commitment for either Section 8 or USDA Rental Assistance on the Units. In the alternative to obtaining a commitment for the rental assistance units, the developer shall agree to a one-time cash deposit into a bank account jointly controlled by the developer and TDHCA to be released monthly to provide the subsidy for the 30% tenants. The amount of the cash deposit shall be equal to the number of units at 30% times 12 times the number of years in the affordability period times the dollar amount difference between the rent level at 50% less the rent level at 30%. A development meeting the requirement of this subsection shall qualify for 13 points. At least 10% of all low-income units at 30% or less of AMGI or, for a Development located in a Rural Area, 7.5% of all low income Units at 30% or less of AMGI and the development has secured a commitment for either Section 8 or USDA Rental Assistance on the Units. In the alternative to obtaining a commitment for the rental assistance units, the developer shall agree to a one-time cash deposit into a bank account jointly controlled by the developer and the TDHCA to be released monthly to provide the subsidy for the 30% tenants. The amount of the cash deposit shall be equal to the number of units at 30% times 12 times the number of years in the affordability period times the dollar amount difference between the rent level at 50% less the rent level at 30%. A development meeting the requirement of this subsection shall qualify for 11 points. At least 5% of all low income Units at 30% or less of AMGI and the development has secured a commitment for either Section 8 or USDA Rental Assistance on the Units. In the alternative to obtaining a commitment for the rental assistance units, the developer shall agree to a one-time cash deposit into a bank account jointly controlled by the developer and TDHCA to be released monthly to provide the subsidy for the 30% tenants. The amount of the cash deposit shall be equal to the number of units at 30% times 12 times the number of years in the affordability period times the dollar amount difference between the rent level at 50% less the rent level at 30%. A development meeting the requirement of this subsection shall qualify for 7 points."

Commenter (8) further believed that a similar argument can be made to subsection (c)(1) of this item to only reward the development where the developer is subsidizing the tenants or has secured the long commitment from a third party government or private source to subsidize the extremely low income tenants without causing other low income tenants to pay more than is necessary for housing.

STAFF RESPONSE: In response to commenter (45), staff believed that the unique nature of supportive housing, including the higher level of services and deeper rent targeting cannot be adequately supported by a traditionally funded transaction. Supportive housing developments are structured in a manner that does not support debt. That is why they are able to sustain larger percentages of 30% AMGI units and more extensive services. The potential for these developments to score higher is offset by the difficult economics of the transaction. The scoring differential has been available in past years and has not disproportionately impacted the allocation of credits to Supportive Housing developments on a statewide basis, however staff recommended several changes to limit this differential in combination with other scoring items. Staff will continue to monitor these numbers and may propose revisions in future QAPs if warranted based on the data. In response to commenter (8), (45) and the suggestion regarding limitation of supportive housing developments, staff believed the changes proposed would have a significant impact on the effect of the overall scoring without providing a reasonable opportunity for public comment and, as a result, would not be considered a natural outgrowth of the rule.

SUPPLEMENT STAFF RESPONSE: In order to fully implement proposed changes under paragraph 4 (relating to the Opportunity Index) staff recommended a clerical change to allow access to the points under the Rent Levels scoring item for an application receiving at least 5 points under the opportunity index rather than the 5 or 7 points identified in the published draft. The change is as follows: "(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments proposed by a Qualified Nonprofit or for Developments participating in the City of Houston's Permanent Supportive Housing ("HPSH") program. A Development participating in the HPSH program and electing points under this subparagraph must have applied for HPSH funds by the Full Application Delivery Date, must have a commitment of HPSH funds by Commitment, must qualify for a minimum of five (5) 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);"

BOARD RESPONSE: At the Board meeting staff recognized that a similar change needed to be made to the Tenant Services scoring item and recommended the following modification. The Board accepted Staff's recommendation. "(3) Tenant Services (§2306.6710(b)(1)(G) and §2306.6725(a)(1)) A Supportive Housing Development proposed by a Qualified Nonprofit or Developments participating in the HPSH 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 HPSH program and electing eleven (11) points under this paragraph must have applied for HPSH funds by the Full Application Delivery Date, must have a commitment of HPSH funds by Commitment, must qualify for a minimum of five (5) 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...."

13. §11.9(c)(4) - Selection Criteria - Opportunity Index (3), (4), (7), (20), (21), (25), (29), (30), (31), (32), (38), (39), (45), (48), (49), (50)

COMMENT SUMMARY: Commenter (3), (31), (36) requested the median Index 1 score in this scoring item be changed from 77 to 76 for consistency with the 2015 data released by TEA. Commenter (31), (36) further elaborated that, while in previous years the statewide median of 77 was applicable to both elementary and all schools combined, the 2015 data released reflecting a score of 76 was specific to the elementary school statewide

median. The fact that this scoring item, according to commenter (31), (36) is directly tied to elementary schools, it justifies the modification to the score of 76. Moreover, commenter (3), (29), (30), (49) requested the poverty rate in this scoring item be increased to 20% for all areas outside of Region 11 where the poverty rate should remain at 35%. Commenter (3), (29), (30), (49) suggested that such small change will add approximately 4.3% more census tracts, which they asserted to still be first and second quartile census tracts, to that of high opportunity which will promote further de-concentration of awards. Furthermore, as asserted by commenter (3), (29), (30) this modification will help alleviate the issue that preservation properties are part of the poverty rate thus making their own communities non-competitive. Commenter (29) further added that in large urban areas a specific census tract may be experiencing an increase in income levels; however, it may take time for the decrease in poverty rate to be seen. Commenter (30) indicated that while they agreed with the change providing opportunities in second quartile tracts, they do not agree that such areas should be a point less than the first quartile areas with the added requirement of the elementary school having received at least one distinction. Commenter (30) believed that if this requirement is to be met for second quartile areas, then such areas should have the same point value as the first quartile tracts. To achieve this, commenter (30) offered the following modification: "(i) The Development is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable. If the Development Site is located in the top quartile, 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 school; or if the Development is located in the second quartile, is in the attendance zone of an elementary school that has a Met Standard rating, achieved a 77 or greater on index 1, and has earned at least one distinction designation by TEA (7 points); (ii) 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, has achieved a 77 or greater on index 1 of the performance index, related to student achievement (6 points); (iii) 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 (5 points); (iv) The Development Site is located in a census tract in the top two quartiles of median household income for the county or MSA as applicable (3 points)." Similarly, commenter (48) asserted that by adding a 6 point scoring item for an elementary school based on its one earned distinction essentially gives bonus points only to second quartile sites whereas top quartile sites are not able to get similar bonus points. The new scoring option does not, according to commenter (48), open new census tracts for competition because the existing scoring criteria still rewards sites with a 77 or greater rating based on quartile without the added bonus points only to second quartile sites. Commenter (48) stated the same bonus points should be allowed for both first and second quartile sites if the elementary school has at least one designation and recommended that for a site within a first quartile could achieve 8 points and a second quartile could achieve 6 points; otherwise, the points for one star of distinction should be removed. Commenter (48) expressed support for maintaining the minimum rating of 77 for this scoring item. Commenter (50) expressed support for adding a point category for sites located in second quartile tracts with exceptionally well performing schools and believed that second quartile tracts provide equal opportunity to that of first quartile tracts, especially when the schools are exceptional. Commenter (45) expressed concern over deletion of the sentence in subparagraph (C) of this section that addressed the issue of choice programs, and stated that in districts with these programs the district rating should be used. According to commenter (45) it is inappropriate to assume that the closest school is the one the students will most likely attend and that it is possible that a school that is closest might be across a major highway and not be the logical choice, with respect to either school rating or transportation. Commenter (45) suggested the following modification: "...In districts with "choice" programs, where students can select one or more schools in the district that they wish to attend, an Applicant may use the district rating..."

Commenter (45) expressed opposition to the use of distinction designations by TEA because of the methodology behind the distinctions, which based on the TEA manual, are determined after schools are put in comparison groups with schools across the state and such groups can vary greatly in size. Commenter (45) believed this is not an accurate reflection of a school's general performance because the "worst of the best" might earn a distinction while the "best of the worst" might not. Commenter (45) maintained that the Opportunity Index is appropriately designed to compare one part of the MSA to another, not to compare a census tract in Spring to one in McAllen, and they believed using the distinction designation violates this concept. If a 6 point scoring option is desired by the Department, it could be achieved by introducing a new factor or simply compressing the scoring, not be arbitrarily adjusting the thresholds for either income, poverty rate, or school ratings and suggested that proximity to community assets, which has been presented as a priority by the Department, could be included in this scoring item without undermining the policy objective of the index itself. To achieve this, commenter (45) recommended one of the following options: "(i) 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 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(6 points); (iii) 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 (4 points); (iv) 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 (2 points)." The other option, according to commenter (45) could be the following: "(i) 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 Site is located in a census tract with income in the second quartile of median household income for the county or MSA as appli-

cable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating, has achieved a 77 or greater on index 1 of the performance index, related to student achievement, and has earned at least one distinction designation by TEA (6 points); (iii) 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, and is within three miles of a full service grocery store, pharmacy, and urgent care facility (6 points); (iv) 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 (v) 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)." Commenter (25) expressed that the points under this scoring item forces development in suburban neighborhoods that are not conducive to the target population. Specifically, commenter (25) indicated that in working with the homeless population, they incorporate the adjacent neighborhood in offering services and working with the local schools to provide tutoring. When forced to develop in suburban communities, commenter (25) believed the resources they are able to provide are being taken away from the most vulnerable citizens and therefore recommended that community revitalization points be weighed just as much as opportunity index points. As it relates to the Rural Opportunity Index, commenter (3) recommended the following be added to clause (i) to provide clarification on "services specific to a senior population". Commenter (49) agreed and recommended "other senior appropriate services as evidenced by the applicant" also be added. "Free or donation based hot meal service for a minimum of once daily 5 days a week (either delivered on site or offered off-site; Access to primary health care including partnerships for on-site services, urgent care clinics that accept Medicaid/Medicare, primary care doctor's offices that accept Medicaid/Medicare, ERs and Hospitals." Commenter (45) disagreed with elderly developments having access to points for being in proximity to "services specific to a senior population" as well as being in proximity to a senior center and suggested deleting one or the other. Commenter (7) requested deleting the point qualifiers for first and second quartiles for existing rural properties in the set-asides since they have fixed locations and cannot be moved and further requested a tiered point system for first and second quartiles and third and fourth quartiles. With respect to the services identified in the scoring item, commenter (7) stated that USDA Rural Development does not permit the use of rent proceeds for on-site or off-site services; therefore, requiring such will create a financial challenge for the property. In lieu of the services, commenter (7) suggested that such developments be allowed to add upgrades such as accessibility, laundry room, community room or upgrades to unit amenities. The proximity to the community assets in this scoring item should be increased from 1.5 miles to 3 miles according to commenter (7) to provide consideration for those existing units that cannot be moved. Commenter (20) asserted there was an inconsistency with requiring an Index 1 score of 77 for the middle or high school in rural region 11 while §11.9(c)(5) relating to Educational Excellence requires an Index 1 score of 70. As a result, commenter (20) recommended the following modification to this scoring item: "(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) - (vi) 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) Except for an Elderly Limitation Development, the Development Site is located within the attendance zone (or in the case of a choice district the closest) of an elementary, middle, or high school that has achieved the performance standards stated in subparagraph (B) (For Developments in Region 11, the middle school or high school must achieve an index 1 score of at least 70 to be eligible for these points); or for Elderly Developments, the Development Site has access to services specific to a senior population within 2 miles. (Note that if the school is more than 2 miles from the Development Site, free transportation must be provided by the school district in order to qualify for points. For purposes of this subparagraph 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 will not be considered.) (3 points);" Commenter (4) expressed concern over the changes to Rural Opportunity Index, making it more difficult to obtain the points. Specifically, commenter (4) contended that there is no "choice" for a child to attend one school over another which implies that under subparagraph (B) there is no choice involved in attending a school that has an index 1 score of 77 or greater. Moreover, commenter (4) maintained that if this scoring item is about distances to commonly utilized or required facilities, and since a family does not have a choice in the rating of the school they may attend, the proposed language does not make sense. Commenter (4) asserted that the 2015 language regarding the Met Standard rating makes the most sense and has the most value to families in that the school the child will attend is close to the development. Commenter (4) also stated the inconsistency with having two senior center-type scoring items worth various points - i.e. 3 points under clause (i) and 2 points under clause (v) of this subparagraph. Commenter (4) emphasized that an elderly application in a rural area that can achieve points for a day care center does not make sense considering they can at least use the school's grounds for walking or exercise. To address these concerns, commenter (4) recommended the changes as reflected below. Commenter (21) expressed similar objections to substituting proximity to senior services for schools in rural regions for elderly developments and further elaborated that schools are a key community asset, providing volunteer opportunities for seniors, open space for recreation, fitness, social interaction and places to gather, hold community meetings and even vote. Commenter (21) proposed the same modifications to that of commenter (4): "(i) The Development Site is located within the attendance zone (or in the case of a choice district the closest) and within 1.5 miles of an elementary, middle, or high school with a Met Standard rating For purposes of this subparagraph 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 will not be considered.) (3 points);" Commenter (39) recommended that for rural areas, points and requirements for sites to be located within a first or second quartile census tract be removed and maintained that a large number of cities are located within a third or fourth quartile, surrounded by a first or second quartile census tract on the outskirts of town.

Commenter (32) recommended paragraph (A) be consistent with paragraph (B) under this scoring item by substituting "the Development Site has access to services specific to a senior population within 1 mile" for the "school attendance zone" criteria. As proposed, commenter (32) maintained that it encourages developers to substitute elderly-only developments for family developments in high opportunity areas with access to good schools. Commenter (45) requested clarification regarding sites located in districts with choice programs and stated the proposed language indicates that the closest school, regardless of distance to the site, must have the index 1 score of 77 under clause (i); however, this seems inconsistent with the concept of the rural opportunity index which requires one threshold that does not involve proximity to the services or community assets and then a second criteria which does require such proximity. Commenter (45) believed this to be redundant considering the first threshold for points and further suggested that either the requirement for the points be proximity to the elementary school or in the attendance zone of a highly rated middle or high school. Commenter (38) urged the Department to balance point incentives for investing in high opportunity areas and the preservation and rehabilitation of existing multifamily housing in a way that makes sense for Texas. Commenter (91) recommended the following subparagraph be added to this scoring item: "(D) For At-Risk Developments, if the proposed Development Site is located within a 1.0 mile radius area containing jobs earning up to $3,333 of at least 10 times the number of HTC units as reported by the US Census On the Map, an Application may qualify to receive up to seven (7) points."

STAFF RESPONSE: As it relates to comments received on the Urban Opportunity Index, in response to commenter (3), (31), (36), the index 1 score of 77, since the inception of the scoring item, has been based on the statewide median of all schools, which has also been the statewide median for elementary schools over the past few years. While staff acknowledged the statewide median for elementary schools has been updated to reflect an index 1 score of 76, staff did not believe the score should be adjusted, since the statewide median for all schools remains at 77. In response to commenters (3), (29), (30), (49) that recommended an increase to the poverty rate threshold to 20% in order to promote de-concentration of awards, staff believed that the current 15% maximum poverty rate continues to be appropriate. The 15% rate has not resulted in a concentration of awards in previous cycles, and it continues to support developments in high opportunity areas. In response to commenters (30), (45) and (48), staff believed that a distinction designation indicates that students in the attendance zone of the elementary school will be able to access important educational opportunities, such that the scoring criteria is warranted. In response to commenter (45), districts that have choice programs that allow students to attend higher performing schools do not necessarily provide transportation to such schools. As such, while a student can attend the school of their choice they are most likely to attend the school in their neighborhood. Sites near poor performing schools should not receive the benefit of a high performing district rating. In response to commenters (45) and (20), the proposed changes to the scoring structure are of a magnitude that would require re-publication and a necessary opportunity for additional public comment. In response to commenter (32) staff agreed that an Elderly Development should be able to either score points for proximity to a high performing school or access to services specific to seniors, staff made the following change: "(i) 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; or for Elderly Developments, the Development Site has access to services specific to a senior population within 2 miles. (7 points)." Staff appreciated the support expressed by commenter (50).

As it relates to the Rural Opportunity Index, in response to commenters (3) (45), and (49), staff believed that "services specific to a senior population" is appropriately descriptive, and that addition of the suggested language would create unnecessary limitation. Further, "services specific to a senior population" may provide in-home support or other types of services senior centers do not provide. In response to commenter (7) the proposed changes to the scoring structure are of a magnitude that would require republication and an opportunity for additional public comment. In response to commenter (20), staff believed that making the suggested change would create an inconsistency with points allowed under the Urban Opportunity Index. In response to commenter (4), (45) districts that have choice programs that allow students to attend higher performing schools do not necessarily provide transportation to such schools. As such, while a student can attend the school of their choice they are most likely to attend the school in their neighborhood. Sites near poor performing schools should not receive the benefit of a high performing district rating. Staff believed the parenthetical regarding the closest choice district school is redundant with subparagraph (C) and therefore can be removed. In response to commenter (4), staff believed that "services specific to a senior population" may provide in-home support or other types of services senior centers do not provide, and is therefore worthy of the additional point. Further, because Elderly Preference developments are required to accept families with children, the inclusion of proximity to licensed child care is appropriate. However to make the language consistent with the proposed Urban Opportunity Area language which allows Elderly Developments to either score points for proximity to a high performing school or access to services specific to seniors, staff made the following change: "(i) The Development Site is located within the attendance zone of an elementary, middle, or high school that has achieved the performance standards stated in subparagraph (B) or for Elderly Developments, the Development Site has access to services specific to a senior population within 2 miles. (Note that if the school is more than 2 miles from the Development Site, free transportation must be provided by the school district in order to qualify for points. For purposes of this subparagraph 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 will not be considered) (3 points.)" In response to commenters (32), (39) the proposed changes to the scoring structure are of a magnitude that would require republication and an opportunity for additional public comment. In response to commenter (38) staff believed the proposed rules take into consideration preservation initiatives and provides incentives where appropriate. In response to commenter (91) the suggested change would be a significant modification in numerous areas of the rules associated with the evaluation process not identified by the general comment expressed.

BOARD RESPONSE: At the Board meeting, staff recommended a change that eliminated the potential combination with 11 points for Tenant Services to exceed the 12 points for Cost of Develop-

ment per Square Foot scoring item which statutorily must have a higher prioritized score. Other service references in the Rural Opportunity Index are not being changed because they refer to proximity to facilities rather than the provision of services. The recommended language is below. The Board accepted Staff's recommendation. "(4) Opportunity Index. (A) (i) 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);...(B)(i) The Development Site is located within the attendance zone of an elementary, middle, or high school that has achieved the performance standards stated in subparagraph (B). (Note that if the school is more than 2 miles from the Development Site, free transportation must be provided by the school district in order to qualify for points. For purposes of this subparagraph 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 will not be considered.) (3 points);.." The Board accepted staff's recommendation.

14. §11.9(c)(5) - Selection Criteria - Educational Excellence (1), (3), (4), (7), (11), (12), (13), (14), (15), (16), (17), (18), (23), (25), (31), (32), (45), (48), (49), (89)

COMMENT SUMMARY: Commenter (3) recommended the following changes to this scoring item indicating that while it is difficult to find sites where all three schools achieve the index 1 score of 77, this proposed modification would create more variation in scoring in at least achieving partial points. "(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with a Met Standard rating and an Index 1 score of at least 77 For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (5 points); (B) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 of at least 70 to be eligible for these points; (3 points) or (C) The Development Site is within the attendance zone of an elementary school, a middle school and a high school either all with a Met Standard rating or any one of the three schools with Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points. (2 points) Commenter (7) suggested there be a consideration for acceptable mitigation for schools that have not achieved the Met Standard rating in rural areas and specifically suggested an approved work-out plan be allowed and worth 2 points. Commenter (11), (12), (13), (14), (15), (16), (17), (18) recommended At-Risk developments with Choice Neighborhood funding be allowed points under this scoring item regardless of their actual school scores. Commenter (11), (12), (13), (14), (15), (16), (17), (18) asserted that in order to be designated a Choice Neighborhood, a housing authority must have demonstrated that the targeted community needs assistance in areas that include housing, education and social services and has developed a community drive transformation plan that addresses those needs. Moreover, the Choice Neighborhood Initiative is a partnership among several federal agencies that supports locally driven solutions for transforming distressed neighborhoods. Commenter (11), (12), (13), (14), (15), (16), (17), (18) suggested this scoring item be revised to allow applications that qualify under the At-Risk set-aside, that have a nationally recognized educational initiative in place and/or receive funding from Choice Neighborhood receive 3 points, regardless of the school rankings and scores. Commenter (25) recommended the points under this scoring item should not be limited to points under the opportunity index and that such change would allow supportive housing developers to continue to work in the urban core, collaborating with local communities to revive neighborhoods. Commenter (4), (48) suggested that the 3 points allowed for a site that has all Met Standard schools effectively de-values a site that has all schools that are Met Standard and have an index 1 score of 77 or greater, which allows for 5 points. Commenter (4) stated that less than 8% of schools have an Improvement Required rating, with many of those schools being clustered in one district. Commenter (4) contended that points should not be awarded for a rating that has been achieved for 92% of all rated schools and that to keep this scoring item meaningful the following modification should be made: "(B) The Development Site is within the attendance zone of an elementary school and either a middle school or high school with a Met Standard rating and an Index 1 score of at least 77 (or 70 for Region 11) or within the attendance zone of a middle and high school with a Met Standard rating and an Index 1 score of at least 77 (or 70 for Region 11) (3 points.)" Commenter (48) recommended the following modifications to this scoring item to create a scoring benefit for high opportunity locations with 2 of 3 schools that have a 77 or better rating: (5 points) - all three schools (elementary, middle, and high school) met 77 (or 70 for Region 11 and 13); (3 points) - two of three schools (elementary, middle, and high school) met 77 (or 70 for Region 11 and 13); (1 point) - all three schools Met Standard. Based on similar recommendations regarding the index 1 score of 76 to the Opportunity Index scoring item, commenter (31) recommended the index 1 score specific to elementary schools within this scoring item be modified to reflect the same. However, commenter (31) recommended the index 1 score for middle and high schools remain at 77 for this scoring item. Proposed modified language from commenter (31): "(A) The Development Site is within the attendance zone of an elementary school with a Met Standard rating and an Index 1 score of at least 76, and a middle school and a high school with a Met Standard rating and an Index 1 score of at least 77 For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (5 points); or.." Commenter (89) believed points under this scoring item should be awarded to charter schools that are being developed as part of a holistic approach to neighborhood revitalization. To qualify for the points the children living at the proposed development must be able to attend the charter school and that the district rating should be allowed to be used on the basis that the charter school may not yet offer and therefore not have data on all grades that will be in place when the development is placed in service. Commenter (89) also expressed concern that senior developments are still eligible to receive 5 points under this scoring item which means they would forgo the 3 points available under Aging in Place and will likely not incorporate design and service features specific to the target population. As a result, senior developments will continue to be built in areas with good schools because they are considered more acceptable to those communities. Commenter (45) expressed the same concern in this scoring item as in Opportunity Index over deletion of the sentence that addressed the issue of choice programs and suggested the modification below. Moreover, commenter (45) believed that using the district rating

in cases with district-wide enrollment is more appropriate than using the rating of the nearest school since there is no guarantee that the tenants will attend the nearest school. "...In districts with "choice" programs, where students can select one or more schools in the district that they wish to attend, an Applicant may use the district rating...". Commenter (45) objected to awarding 3 points for developments located in the attendance zones of schools that only have a Met Standard rating on the basis that it is not in line with the concept of the scoring item and would only serve to severely dilute its impact. Commenter (45) recommended the following changes: "... An Application may qualify to receive up to four (4) 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 (C) 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 rating of the closest elementary, middle, or high schools, respectively, which may possibly be attended by the tenants. In districts with "choice" programs, where students can select one or more schools in the district that they wish to attend, an Applicant may use the district 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. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (4 points); or (B) The Development Site is within the attendance zone of an elementary school, and either a middle or high school with the appropriate rating. For Developments in Region 11, the middle or high school must achieve an index 1 score of at least 70 to be eligible for these points. (2 points) (C) The Development Site is within the attendance zone of a middle school and high school with the appropriate rating. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (2 points)." Commenters (1), (23), (32), (49) all commented regarding Aging in Place points for Supportive Housing or single-room occupancy Developments. They implied a need for parity between developments choosing Aging in Place points and those electing Educational Excellence points and that selection of such points should be mutually exclusive. Commenter (45) also commented on the parity intent between Aging in Place points and Educational Excellence points in order to maintain scoring parity between Elderly and General Developments.

STAFF RESPONSE: In response to commenters (7), (11), (12), (13), (14), (15), (16), (17), and (18) staff believed that the Met Standard rating is an appropriate criterion for schools, as more than 94% of districts and more than 84% of campuses across the state have met this level. While mitigation efforts and other initiatives are to be applauded, there is no assurance that they will be successful within the relatively short period between application and occupancy of a development. In response to commenters (1), (23), (32), (45), and (49) regarding parity in points achievable for Aging in Place and Educational Excellence, staff had also considered recent legislation regarding parity between Elderly and general population Developments in recommending that Supportive Housing Developments be limited to two (2) points under Educational Excellence. This limitation would allow parity between a Supportive Housing general population Development and an Elderly Development. Staff will further be proposing an alternative two (2) points under Aging in Place for Supportive Housing Developments which are also HOPA Elderly Limitation restricted. In response to commenter (3), (4), (45), (48) staff agreed that there should be more levels of differentiation for distinction by location. Staff proposed the following change: "(5) Educational Excellence. Except for Supportive Housing Developments, an Application may qualify to receive up to five (5) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A) - (C) of this paragraph, as determined by the Texas Education Agency. A Supportive Housing Development may qualify to receive no more than two (2) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A) - (C) of this paragraph, as determined by the Texas Education Agency. 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 rating of the closest elementary, middle, or high schools, respectively, which may possibly be attended by the tenants. The applicable school rating will be the 2015 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 a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (5 points, or 2 points for a Supportive Housing Development); (B) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points; (3 points, or 2 points for a Supportive Housing Development); or (C) The Development Site is within the attendance zone of an elementary school, a middle school and a high school either all with a Met Standard rating or any one of the three schools with Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points. (1 point)" In response to commenter (11), (12), (13), (14), (15), (16), (17), (18) staff recog-

nized that the initiatives create potential for future improvement to the schools, however the purpose of this scoring criteria is to recognize the current rating of schools.

BOARD RESPONSE: At the Board meeting, staff recommended a change to clarify and amend one of the changes made as a result of public comment to limit a Supportive Housing Development to just two (2) of the five (5) points potentially available for Educational Excellence. As discussed in the reasoned response the cap on these points offsets the three point advantage Supportive housing developments receive for Rent Levels (proposed 10 TAC §11.9(c)(2)) and Tenant Services (proposed 10 TAC §11.9(c)(3)). The Board accepted Staff's recommendation.

15. §11.9(c)(6) - Selection Criteria - Underserved Area (3), (4), (5), (7), (20), (21), (28), (31), (32), (33), (34), (36), (40), (45), (48), (49), (50)

COMMENT SUMMARY: Commenter (4) expressed support under the colonia option within this scoring item and further indicated such changes help to remove the ambiguity and subjectivity. Commenter (32) expressed similar support and indicated that the proposed changes strike an appropriate balance between giving preference to high opportunity areas and providing infrastructure needs of colonias. With respect to the economically distressed areas ("EDA") option within this scoring item, commenter (4) proposed that this remain at 2 points (instead of 1 point) for those developments in EDA areas that do not have an existing HTC development. Commenter (3) proposed the following revisions to this scoring item; while commenter (31), (36) expressed similar changes to subparagraph (C): "(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 the same population type which remains an active tax credit development (2 points); (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 the same population type which remains an active tax credit development serving the same Target Population (2 points); (E) A census tract that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for the same population type which remains an active tax credit development serving the same Target Population within the past 10 years (1 point);" Commenter (4) expressed support for the current language under subparagraph (C) and maintained that there is already an option in this scoring item for a census tract that does not have a same-population development in 10 years. Commenter (4) expressed support for subparagraph (D) relating to rural areas underserved by HTC developments; specifically that there are fewer rural towns with even fewer census tract options compared to urban areas. Commenter (5) recommended the option under subparagraph (E) be deleted on the basis that it offers no benefit and its real effect is that it makes traditional underserved areas lose part of its advantage. Commenter (5) asserted the option is too easy since most census tracts would fall into this category thereby creating a free point. Commenter (32) believed that a lack of affordable housing should not qualify for a point in scoring and further illustrated that the 50 census tracts with zero housing units of any type would qualify for these points. Commenter (32) further recommended that this point should only be available to those proposing new construction that also qualifies under the Opportunity Index. Commenter (33) asserted that this scoring option puts a development in a census tract with no existing tax credits at a one point disadvantage. Based on supplemental information provided by commenter (33), census tracts with properties awarded in 1994, 1998 and 2001 would have a one point advantage to the surrounding census tracts that have none which does not, according to commenter (33) meet the spirit of an underserved area. Commenter (33) provided the following modification: "(E) A Place, or if outside the boundaries of any Place, a County that currently does not have more than one (1) competitive tax credit allocation or a 4 percent non-competitive tax credit allocation awarded prior to 2001 (15 years) (1 point);" On the contrary, commenter (4), (21) expressed support for this option and commenter (21) recommended that, for consistency, the "year" column on the property inventory be used which in some instances is the year following the date in the "board approval" column. Commenter (5), (33) stated that subparagraph (F) is too vague and broad in its intentions because 5 miles is significant and too wide, effectively creating a 10 mile circle around a development. Commenter (5) asserted that if the incentive is to be in an area of significant new growth then the incentive should be to be in the area, and thus recommended that the distance limitation be within one or two miles. Commenter (32) indicated that a 5-mile radius in an urban area would cover neighborhoods of a wide variety of quality and a 50-person facility would have a negligible impact on the economic opportunities available to the area's population. In smaller areas, a 50-person facility may represent a notable change in local conditions; however, commenter (32) expressed an opposition to the state choosing the placement of 30-year housing infrastructure by chasing after the recent employment activity of a single employer. Commenter (32) further added that other than wage level, there is no restriction on the type of business that qualifies a development for this point, and of additional concern is the lack of zoning in certain areas which could incentivize development near businesses unsuitable for a residential area. Commenter (32), (33) recommended removing subparagraph (F) from this scoring item and commenter (33) suggested that this concept is better suited for community revitalization criteria once there is a consensus on definitive support material. Commenter (3), (5), (33), (45), (48) requested clarification regarding what documentation would be required to substantiate points under subparagraph (F) of this scoring item and if a definitive method by which to document compliance the provision cannot be identified then commenter (5), (33), (34), (40), (45), (48) suggested subparagraph (F) be deleted. Commenter (28) similarly expressed that a clear, reliable third party source needs to be identified for obtaining the data relating to subparagraph (F) and further stated that a letter from a city/county official can be subjective and a strong case for administrative review. Commenter (4), (31), (36) also recommended this item be deleted since there does not seem to be a consistent objective data source to document the points and commenter (4) proposed that staff and the development community explore SBA and State incentive programs for consideration in the 2017 QAP. Commenter (7), (20) suggested this item be expanded to include business expansion and addition of employees and space as reflected in the following modification proposed by commenter (20): "(F) Within 5 miles of a new business that in the past two years has constructed a new facility and undergone initial hiring of its workforce or relocated to the area with an existing workforce employing 50 or more persons at or above the average median income for the population in which the Development is located (1 point); or." Commenter (7) further added that such change can be documented with construction plans, or site acquisition and verification of business hires can be provided by the HR department of the expanding business. Commenter (3), (49) suggested the following modification as it relates to leased space: "(F) Within 5 miles of a

new business that in the past two years has constructed a new facility or leased new (and/or additional) office space and undergone initial hiring of its workforce employing 50 or more persons at or above the average median income for the population in which the Development is located (1 point); or." Commenter (21) asserted that the proposed language makes it impossible to verify, questioned whether expansion would count as a new facility, along with new buildings or an addition and further stated that there was no way to verify salary data. Commenter (21) offered the following modification to this item and further added that if such modification is not used then the item should be removed: "(F) A site with a 10:1 or higher ratio of jobs earning the top tier of wages within 1 mile of the site compared to the number of HTC units, as evidenced by the U.S. Census Bureau's on the map tool (1 point); or" Commenter (50) expressed support for subparagraph (F) and further recommended the U.S. Census Bureau's On the Map tool be used to substantiate the scoring item. Commenter (4) indicated there was not a consistent data source to use for subparagraph (G) and that considering the fact that some census tracts changed from 2000 to 2010 there would not data available for some census tracts prior to the 2010 American Communities Survey ("ACS") data. Commenter (4), (34), (40) proposed that this subparagraph be deleted until more research can be done to identify a consistent data source, unless, according to commenter (34), the Department intends to publish such data within the Site Demographics Report. Commenter (28) inquired whether the Department will require use of ACS data and if so, which data specifically. Commenter (21) stated that data is only available at the Place level and not the census tract level and further stated that by 2016 the 2000-2010 data is outdated. Commenter (21) indicated that the newest data sources that come closes to a 10-year spread is 2013-2010 ACS data since 2003 numbers are not available; therefore, commenter (21) recommended the following modification: "(G) A Place which has experienced growth increases in excess of 120% of the Place population growth over the past 3 years as evidenced by American Community Survey 2010 to 2013 data (1 point)." Commenter (31), (36) also indicated that accurate information related to growth is not available at the census tract level and stated that Place level is a more appropriate indication of growth for a community as a whole and therefore recommended the following modification: "(G) A Place which has experienced growth increases in excess of 120% of the county population growth over the past 10 years (1 point)." Commenter (40) recommended that should items (F) and (G) remain in the QAP then the maximum point value for this item should be increased to 4 points on the basis that areas that were truly underserved, for example, a Place that has never had a tax credit development that also has a new employment center and has experienced exceptional growth could achieve the maximum points. Commenter (32) suggested subparagraph (G) be modified to reflect areas that are rapidly growing for the better, based on census tract poverty, census tract income and neighborhood land values relative to a Place (Appraisal District) in addition to population growth. Commenter (32) recommended such growth points be awarded to those developments in areas that reflect a statistically significant improvement on two of the three aforementioned metrics over the decennial measurement period. Commenter (32) questioned whether the 120% growth rate is a meaningful benchmark and requested clarification on how it would be applied. Specifically, for a county with a 1% growth rate, 120% of the county growth rate is 1.2%. A census tract with a 1.21% growth rate, according to commenter (32), is hardly deserving of points for being in an underserved area. Commenter (32) recommended that a floor growth rate be included, should this option remain under this scoring item. Commenter (32) suggested ranking tracts by growth rate by the state service region and awarding these points to the top 10% tracts in each region, provided that they also meet the poverty, income and land value metrics as previously described and have a large enough starting population base to make the percentage, for example 3,000 which is about 75th percentile tract in the state. Commenter (45) disagreed that high growth areas are equated with underserved areas but rather believed that an area is underserved with respect to the amount of affordable housing available. Commenter (45) contended that it's possible to have significant growth and also have a high concentration of affordable housing. Furthermore, high growth areas would already be more attractive to developers and unnecessary to incentivize further. Commenter (45) believed that high growth areas inside large MSAs that lack affordable housing should be incentivized and suggested that the same criteria used for rural developments be used for urban developments. Commenter (45) indicated that the administration of carrying out the proposed language will be difficult and would result in multiple appeals and third party requests for administrative deficiencies. Commenter (45) suggested the following modifications to this scoring item: "(A) The Development Site is located wholly or partially within the boundaries of a colonia... (2 points); (B) An Economically Distressed Area (1 point); (C) 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 (2 points); (D) A census tract that has not 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 within the past 10 years (1 point)." Commenter (50) expressed support for subparagraph (G) of this scoring item.

STAFF RESPONSE: Staff appreciated the support expressed by commenter (4), (32) regarding colonia option. In response to commenter (4) on increasing the points associated with EDA's, staff believed that while the Department is required by statute to provide a point incentive for an EDA, increasing the point value further does not align with the goal of producing housing in high opportunity areas. In response to those commenters requesting option (C) be modified to consider those developments that are of the same population type, staff agreed and has made the change as recommended for consistency with options (D) and (E). In response to the varying comments associated with options (F) and (G) relating to job growth and population growth, staff noted that these were included in the draft in response to public comment in September. After reviewing the comments provided and performing its own research into the options, staff recommended removing these from consideration under this scoring item. While it may be worth pursuing in future rule-making, staff was not been able identify a consistent, reliable data set regarding an appropriate distance, total number of jobs, or percentage of population growth in order to retain the scoring item for the 2016 application cycle.

BOARD RESPONSE: At the Board meeting, staff proposed a clarification to this scoring item to ensure that a development would not be ineligible for the point if an existing tax credit development less than 10 years old targeting a different population existed in the same census tract. The recommended modification is as follows: "(6) Underserved Area. (E) A census tract that has not received a competitive tax credit allocation or a 4

percent non-competitive tax credit allocation for a Development serving the same Target Population that remains an active tax credit development or if it is serving the same Target Population then it has not received the allocation within the past 10 years (1 point)." The Board accepted Staff's recommendation.

16. §11.9(c)(7) - Selection Criteria - Tenant Populations with Special Housing Needs (3), (4), (7), (19), (21), (27), (28), (30), (31), (33), (36), (41), (45), (52), (53), (54), (92)

COMMENT SUMMARY: Commenter (3), (31), (33), (36), (45), (92) requested subparagraph (A) under this scoring item that allows points for placing 811 units in existing developments be deleted with commenter (3), (33), (36), (92) further asserting that because a large percentage of developers will not be able to qualify for the points it creates an unfair competitive advantage for those with a disproportionate number of developments that would not qualify. Commenter (31), (45) asserted that this scoring item results in providing a competitive advantage to some within the application round based on a factor unrelated to the development being proposed within the current application. Similarly, commenter (7) recommend subparagraph (A) be removed for rural USDA properties on the basis that it only serves to reward developers with urban properties who convert to 811 units. Commenter (7) further asserted that when a workable policy to accommodate the 811 funds is developed by the Department, it should not further penalize the preservation of USDA units. Commenter (28), (52), (92) asserted the points allowed for existing developments to include 811 units is anti-competitive and exclusionary, sacrifices the integrity of the program and will prevent developers that lack such a portfolio from competing and will further restrict new developers from entering the industry. Commenter (92) further stated that only 7 regions would qualify for the 811 units thereby leaving the 19 non-811 regions unable to compete which creates a privileged group of developers to dominate all regions in the state. According to commenter (92) such treatment fails to treat developers in all regions equally. Commenter (33), (52) suggested this scoring item be modified in order to give all developers equal access to the same scoring items or that it be a threshold requirement associated with the 4% HTC program where the developments are larger and usually located in areas where services are more readily available for 811 tenants. Commenter (28) expressed a similar recommendation but also offered that for 4% HTC applications, 10% of the total units in a qualified development be the minimum requirement. Commenter (30), (33) also suggested 811 units be a 4%HTC threshold requirement utilizing a tiered approach based on the number of the total number of units - i.e. 100 units or less must commit 10 Section 811 units; 101-200 units must commit 20 units, 201-300 or more units must commit 30 Section 811 units. Commenter (33) also proposed that the Department propose a NOFA to owners with eligible properties a TCAP grant of $150,000 for commitment (15) 811 eligible units which can further be limited to a certain number of developments. Commenter (28) further added that should the option to include 811 units under the 4% HTC program not be possible for the 2016 application cycle, it should be included in 2017 to work with the 9% application cycle. Commenter (19), (53), (54) expressed support for the incentive for 811 units to be placed into existing developments which is an excellent way to increase the available housing units now instead of waiting 2 to 3 years for new construction projects to be completed. According to commenter (54), there were 17 properties (a mix of both new and existing developments) that chose to set aside 811 units, which illustrates the need for more developers to participate in the program. Commenter (19) also suggested that other incentives such as increasing developer fees to 20% or shortening extended use periods by 5 years be considered as well. Commenter (41) stated that Corpus Christi has an extremely high unmet need for affordable, accessible, integrated rental housing for people with disabilities and others below 30% AMI. Commenter (41) further requested that the 811 program be available in Corpus Christi so that the needs of their community are met, specifically, those individuals on SSI who are unable to relocate from institutions and those who are homeless or at risk of homelessness. Commenter (27) determined that only 43% of the Department's inventory would be eligible for 811 vouchers without taking into account the developments located in the floodplain which would decrease the number of qualifying developments. Commenter (27) stated that considering the importance of tie-breakers in determining awards, those developers without existing developments that would qualify are at a disadvantage and has the ability to put a number of developers out of business for 2016. Commenter (27) requested subparagraph (A) be modified to allow 2 points to be achieved instead of the proposed 3 points. Commenter (30) questioned why the point values associated with this scoring item changed over the previous year when the path by which to receive the points has not changed. Commenter (30) expressed that creating an unfair playing field is bad policy and requested subparagraph (A) be removed from this scoring item. Commenter (21) stated that the proposed language results in rural developers who do not have any urban units being disadvantaged by one point and recommend the following revision: "(A) Applications in Urban Regions may qualify for three (3) points if a determination by the Department of approval is submitted in the Application indicating participation of an existing Development's in the Department's Section 811 Project Rental Assistance Demonstration Program..." Commenter (4) asserted that subparagraph (A) penalizes new developers and developers that lack the portfolio that would meet the 811 requirements and further suggested that there be an incentive for developers with qualifying properties that does not involve a 1 point advantage. To achieve this, commenter (4) recommended that all options under this scoring item be modified to 3 points and modify subparagraph A to reflect the following as an incentive: "(A) Applications may qualify for three (3) points if a determination by the Department of approval is submitted in the Application indicating participation of an existing Development's in the Department's Section 811 Project Rental Assistance Demonstration Program ("Section 811 PRA Program"). In order to qualify for points, the existing Development must commit to the Section 811 PRA Program at least 10 units or, if the proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application. Applications electing this subparagraph may request a LURA amendment with no fee to reduce the Extended Affordability Period by 5 years for the existing Development participating in Section 811 per this subsection." Commenter (45) expressed concern that those applicants who may qualify for these points may not necessarily have good compliance histories and did not believe that placing 811 units in existing developments will not necessarily deliver the units much sooner than it would if applicants were only required to place the 811 units in the developments proposed in the 2016 application cycle. Commenter (45) recommended the option (A) be removed but alternatively suggested the following modifications: "(A) Ap-

plications may qualify for three (3) points if evidence is provided in the Application that a Memorandum of Understanding ("MOU") or other appropriate document has been fully executed by the Department and Applicant (or Affiliate of the Applicant) indicating participation of an existing Development in the Department's Section 811 Project Rental Assistance Demonstration Program ("Section 811 PRA Program"). In order to qualify for points, the portfolio of the Applicant must not have compliance history of a category 2, 3, or 4 as determined in accordance with 10 TAC §1.301, related to Previous Participation, and the existing Development must commit to the Section 811 PRA Program at least 10 units or, if the proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application."

STAFF RESPONSE: This item was one of the top items that received significant comment and while the majority of comment was against inclusion of the entire item, the only significant change from last year's rule was the expansion of allowing owners of existing developments to add 811 units to those developments. In order to expedite the impact of this expansion of the scoring item, an additional point was proposed in the draft QAP. Reducing the proposed three points for the option in (7)(A) to two points would continue to allow for the expansion of this scoring item to attract owners with existing available units without giving them an undue competitive advantage since all new applicants could choose the two points under (7)(C). Removing the item altogether would take away an effective tool utilized last year to create more targeted affordability. In response to commenter (41) staff agrees and has modified the item to include the Corpus Christi MSA.

BOARD RESPONSE: Accepted Staff's recommendation.

17. §11.9(c)(8) - Selection Criteria - Aging in Place (1), (3), (7), (9), (21), (23), (32), (36), (45), (49), (50), (51)

COMMENT SUMMARY: Commenter (1), (23) suggested an alternative for supportive housing, in line with the this scoring item and further stated that similar to that of Aging in Place developments, the quality of nearby schools has no bearing on the suitability of a site for single room occupancy supportive housing where no children live at the property. The requirement for high performing schools presents an unnecessary hurdle because those residing in SRO developments do not have school aged children; therefore, commenter (1), (23), (32) recommended the following: "(8) Aging in Place. (§2306.6725(d)(2) An Application for an Elderly Development or a Supportive Housing Single Room Occupancy Development may qualify to receive up to three (3) points under this paragraph only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence)." Commenter (49) recommended similar changes so that such developments could be eligible for points under this scoring item in lieu of Educational Excellence on the premise that such households without children do not house school age children and schools are not a resource for this very vulnerable population. "(8) Aging in Place. (§2306.6725(d)(2) An Application for an Elderly Development and Supportive Housing that serves households without children (100%) 1 bedroom and/or studios) may qualify to receive up to three (3) points under this paragraph only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence)." Commenter (3), (50) requested this scoring item be modified to reflect the following, with commenter (50) further stated that the recommended language would better serve the target population considering that many senior residents are not in wheelchairs. Moreover, commenter (50) expressed concern that 100% accessible units would be cost prohibitive and difficult to market due to the institutional feel it would create. "(A)In addition to meeting all of the accessibility and design standards under Section 504 of the Rehabilitation Act and the 2010 ADA Standards (with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities"), the Applicant will include (3 points): (i) "Walk-in" showers of at least 30" x 60" in at least 50% of all residential bathrooms; (ii) 100% of units include blocking in showers/tubs to allow for grab bars at a later date if requested as a reasonable accommodation; (iii) Chair height (17-19") toilets in all bathrooms; and (iv) A continuous handrail on at least one side of all interior corridors in excess of five feet in length. (B) The Property will employ a full-time resident services coordinator on site for the duration of the Compliance Period. If elected under this subparagraph, points for service coordinator cannot be elected under subsection (c)(3) of this section (related to Tenant Services). For purposes of this provision, full-time is defined as follows (2 points): (i) a minimum of 16 hours per week for Developments of 80 Units or less; (ii) a minimum of 24 hours per week for Developments of 81 to 120 units; and (iii) a minimum of 32 hours for Developments in excess of 121 Units." Commenter (49) requested similar modifications, with the following slight variation regarding weekly hours for the resident services provision. Commenter (49) also noted that in order to comply with HB 3311 creating point parity, the maximum score under this item should be increased to 5 points to be equal with Educational Excellence. "(i) a minimum of 16 hours per week for Developments of 80 Units or less; and (ii) a minimum of 32 hours for Developments of 81 Units or more." Commenter (7) stated that it is not possible to adapt all existing units in a USDA 515, 514/516 property to full accessibility and further asserted that not all residents want an adapted unit, they are difficult to rent to residents that do not require such accommodations. Commenter (7) recommended the requirement for full accessibility be removed and should just continue to be made where reasonable. With respect to the full-time resident services coordinator requirement under this scoring item, commenter (7) recommended it be deleted as well on the basis that USDA does not allow rent proceeds to be used for such services. As an alternative, commenter (7) recommended the language be modified to allow the property to provide appropriate services for elderly residents with at least one event per month. Moreover, commenter (7) recommended that adding upgrades to the property, including accessibility, laundry room or community room, or upgrades to unit amenities be considered a replacement point category. Commenter (51) expressed support for the inclusion of the onsite service coordinator but indicated concerns that the effectiveness of the service coordinator would be diminished if the person is part of the property management team; therefore, clarification was requested to help ensure the effectiveness of the service coordinator. Commenter (9) expressed concern over the cost associated with converting 100% of the units in existing properties and stated the minimum to do so is approximately $10,000 - $15,000 for a full ADA conversion which would take funds away from other much needed rehab. Moreover, according to commenter (9) it is physically impossible to make the space in the bathrooms to meet the standards. As an alternative, commenter (9) recommended this item be modified to require an additional 5% of the total units be converted to the ADA standards. This

would include lower cabinets, roll-in showers, etc. and would be in addition to the already required 5%. Moreover, commenter (9) suggested a requirement that 50% of the bathtubs be converted to roll-in showers. These changes, according to commenter (9) would be a financially better use of HTC funds and would better meet the needs and wants more accurately. Commenter (21) recommended the following revision to this scoring item which would still achieve a policy that would allow individuals to age in place gracefully and with dignity: "(A) Fifty (50) percent of the Units are designed to be fully adaptable (for both mobility and visual/hearing impairments) in accordance with the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities". (2 points)" Commenter (36) recommended the following modifications to this scoring item based on concerns over the marketing and cost implications of developments designed to be 100% fully accessible: "(A) In addition to meeting all of the accessibility and design standards under Section 504 of the Rehabilitation Act and the 2010 ADA Standards (with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities") the Applicant will build 50% of the units with adaptable design features as specified in 24 CFR 100.205(c)(1)-(3). (2 points)" Commenter (45) disagreed with the addition of this scoring item on the basis that, while it is meant to create parity with the educational excellence scoring criteria for elderly developments, considering the new definition for elderly development, it is quite possible that such tenants would have children therefore being in the attendance zones of high quality schools would definitely benefit them. Moreover, even if the tenants do not have children, high performing schools is one of many indicators of a high quality neighborhood in general. In terms of competing for sites, if the Department believes there should be a path by which elderly developments compete for credits, commenter (45) suggested that it be driven by location, similar to the Educational Excellence scoring item. While the location of a development is a known fact at the time of application, a commitment to develop accessible units and provide services is in reality an unknown. Commenter (45) further emphasized that it's possible for an applicant to fail to meet these requirements which in this case would mean having denied credits to an applicant that was clearly already meeting the equivalent requirement. Commenter (45) recommended this scoring item be removed.

STAFF RESPONSE: The proposed rule allows an elderly development to choose to be in a location with Educational Excellence or provide for Aging in Place but not both. This allows Elderly Developments to have greater flexibility in location for developments that could exclude families. However, some elderly developments include or allow for families with children which would benefit from being in attendance zones of high quality schools. Similarly Supportive Housing Developments cannot exclude families with children (unless the development is qualified to do so under Housing for Older Persons Act "HOPA") and some types of Supportive Housing, such as those targeting single parents would also benefit from being in attendance zones of high quality schools. Staff agreed that the maximum points for Educational Excellence and Aging in Place should be equivalent at five points. Staff agreed that a reduction in the intensity of accessibility of Aging in Place features would make this option more achievable. Staff also believed the provision for a service coordinator should be simplified and proposes the following changes. In addition, staff believed Supportive Housing Developments which serve Elderly Limitation restricted households should also be able to achieve scoring parity for Aging in Place points with Supportive Housing Developments serving the general population which receive Educational Excellence points.

SUPPLEMENT STAFF RESPONSE: In response to commenters (1), (23), (32), (45), and (49) regarding parity in points achievable for Aging in Place and Educational Excellence, staff also considered recent legislation regarding parity between Elderly and general population Developments in recommending that Supportive Housing Developments be limited to two (2) points under Educational Excellence. This limitation would allow parity between a Supportive Housing general population Development and an Elderly Development. Staff further proposed an alternative two (2) points under Aging in Place for Supportive Housing Developments which are also HOPA Elderly Limitation restricted. In addition Staff recommended that the limitation allowing Elderly Developments only to achieve the maximum points is inconsistent with HB 3311 and therefore proposed to strike that limitation. Staff proposed the following change: "(8) Aging in Place. (§2306.6725(d)(2) An Application may qualify to receive up to five (5) points under this paragraph only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence). An Application for a Supportive Housing Development may qualify to receive up to two (2) points under subparagraph (A) only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence). (A) In addition to meeting all of the accessibility and design standards under Section 504 of the Rehabilitation Act and the 2010 ADA Standards (with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities"), the Applicant will include (3 points): (i) Walk-in (also known as roll-in) showers of at least 30" x 60" in at least one bathroom in each unit; (ii) 100% of units include blocking in showers/tubs to allow for grab bars at a later date if requested as a reasonable accommodation; (iii) Chair or seat height (17-19") toilets in all bathrooms; and (iv) A continuous handrail on at least one side of all interior corridors in excess of five feet in length. (B) The Property will employ a dedicated resident services coordinator on site for the duration of the Affordability Period. If elected under this subparagraph, points for service coordinator cannot be elected under subsection (c)(3) of this section (related to Tenant Services). For purposes of this provision, dedicated is defined as an employee that is reasonably available exclusively for service coordination to work with residents during normal business hours at posted times (2 points.)"

BOARD RESPONSE: At the Board meeting, staff recommended a change to this scoring item. Specifically, in order to comport with HB 3311, the limitation specific to an Elderly Development was removed. In addition, this item has been decoupled from the Educational Excellence scoring item. The deletion of the 2 points in paragraph (B) also eliminates the potential combination with 11 points for Tenant Services to exceed the 12 points for the Cost of Development per Square Foot scoring criteria which statutorily must have a higher prioritized score. The proposed language is below. "(8) Aging in Place. (§2306.6725(d)(2) An Application may qualify to receive up to three (3) points under this paragraph. In addition to meeting all of the accessibility and design standards under Section 504 of the Rehabilitation Act and the 2010 ADA Standards (with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities"), the Applicant will include (3 points): (A) Walk-in (also known as roll-in) showers of at least 30" x 60" in at least one bathroom in each unit; (B)100% of units include blocking in showers/tubs to allow for grab bars at a later date

if requested as a reasonable accommodation; (C) Chair or seat height (17-19") toilets in all bathrooms; and (D) A continuous handrail on at least one side of all interior corridors in excess of five feet in length." Following public comment at the Board meeting the Board deleted the scoring item in its entirety.

18. §11.9(c)(9) - Selection Criteria - Proximity to Important Services (3), (5), (7), (24), (30), (39), (43), (44), (45), (48)

COMMENT SUMMARY: Commenter (3), (24), (30), (43), (44) requested the radius for developments in rural areas be increased to 3 miles further indicating that such residents are reliant on their cars and these services are on the outskirts of town near more major roadways. Commenter (5) recommended this scoring item be modified to increase the distance to 3 miles of a full service grocery store, a pharmacy and a medical office or urgent care facility, including hospitals. According to commenter (5) such change would help incentivize development and will keep the point item hard to obtain but not arbitrarily limit to one mile. Commenter (24), (43), (44) additionally suggested the distance to these services for urban development's should be increased to a 1.5 mile radius which would help developers find land large enough to support a multifamily development, where land will be less expensive and there will be less opportunity for opposition to new multifamily housing. Commenter (7) asserted this scoring item needs to be further defined based on the inability for an existing property to be relocated in order to achieve the Department's new construction goals and recommended there be a focus on priorities and points for existing developments under a separate scoring item. Commenter (39) asserted that proximity to a grocery store and pharmacy have little to no effect on the demand for housing and recommended this scoring item be deleted. Commenter (45) mentioned that the Remedial Plan called for the removal of all development location incentive criteria, outside of the opportunity index, educational excellence and those otherwise mandated by statute or federal law. The addition of this location specific scoring item, according to commenter (45) could be counteractive to the goals of the Remedial Plan, and specifically the Opportunity Index, and recommended it be removed. Commenter (48) recommended proximity to an urgent care facility be included as a third option under this scoring item on the basis that having 2 of 3 important services seems reasonable and allows many new sites to be competitive. Commenter (48) further added that while a one mile radius for most urban locations may seem appropriate; however, most top quartile locations where land is available for developments have full service grocery stores outside of a mile, but inside a 2 mile radius.

STAFF RESPONSE: Staff agreed with commenter (3), (24), (30), (43), (44) in increasing the distance for rural areas to 3 miles and to 1.5 miles for urban areas in response to commenter (24), (43), (44) and made the changes accordingly. In response to commenter (39) inclusion of these items is not an issue of demand but rather ensuring there is access to these important services. In response to commenter (45) staff did not agree with the commenter that proximity to these services is inconsistent with the objectives of higher opportunity sites and more de-concentration.

BOARD RESPONSE: Accepted Staff's recommendation.

19. §11.9(d)(1) - Selection Criteria - Local Government Support (2), (26), (32)

COMMENT SUMMARY: Commenter (26) asserted that the Department has discretion in defining the terms upon which the points under this scoring item would be awarded and indicated that the segregative effect could be lessened by conditioning the award of positive and negative points based on a statement from the municipality of reasons for the opposition and provide the developer with an opportunity to respond to the opposition. Commenter (2) contended that there is a systemic bias that heavily favors awarding tax credits in communities that oppose them and recommended the changes below on the basis that it would help level the playing field. "(A) Within a municipality, the Application will receive or sustain: (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; (ii) a deduction of seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development; (iii) if the Governing Body of that municipality elects its members from single-member districts, an addition of ten (10) points for a letter of support from that particular member of the Governing Body who represents the district which includes the territory covered in the Application or Development: or (iv) if the Governing of that municipality elects its members from single-member districts, a deduction of ten (10) points for a letter of opposition from that particular member of the Governing Body who represents the district which includes the territory covered in the Application or Development. (B) Within the extraterritorial jurisdiction of a municipality, the Application shall receive or lose points under clause (i) or (ii) of this subparagraph and under clause (iii) or (iv) of this subparagraph as indicated: (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) a deduction of eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development; or (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) a deduction of eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development. (C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality, an Application or Development shall receive or sustain: (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) a deduction of (17) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development." Commenter (32) expressed support regarding the modification to this scoring item that does not allow letters to be changed or withdrawn once submitted to the Department.

STAFF RESPONSE: The structure of the rule has been developed in a manner to achieve the clear purpose of the statutory scoring item and the changes requested by the commenter may conflict with statute. Moreover, they are significant substantive changes from what was proposed and could not be accomplished without re-publication for public comment. Staff did not recommend any changes based on these comments.

BOARD RESPONSE: Accepted Staff's recommendation.

20. §11.9(d)(2) - Selection Criteria - Commitment of Development Funding by a Local Political Subdivision (22), (34)

COMMENT SUMMARY: Commenter (22) suggested clarification regarding whether a development located in an ETJ should

look to the city or county for funding. Commenter (34) requested this item be modified to include language from similar scoring items in that "once a resolution is submitted to the Department, it may not be changed or withdrawn."

STAFF RESPONSE: In response to commenter (22) either the city or county can provide the documentation. In response to commenter (34) staff agreed and modified the scoring item accordingly.

BOARD RESPONSE: Accepted Staff's recommendation.

21. §11.9(d)(4) - Selection Criteria - Quantifiable Community Participation (2), (32), (63)

COMMENT SUMMARY: Commenter (32) expressed support regarding the modification to this scoring item that does not allow letters to be changed or withdrawn once submitted to the Department. Commenter (32) further indicated that the Department's process for registering neighborhood associations is unnecessary and duplicative of the functions of the secretary of state and the county. This process, according to commenter (32), allows groups as mall as two people to have a nine-point impact on an application and is therefore an impediment to fair housing choices and conflicts with the State's commitment to reduce NIMBYism as outlined in the State of Texas Plan for Fair Housing Choice: Analysis of Impediments. Commenter (2) contended that there is a systemic bias that heavily favors awarding tax credits in communities that oppose them and recommended the changes below on the basis that it would help level the playing field. "(4) Quantifiable Community Participation. (§2306.6710(b)(1)(I); §2306.6725(a)(2)) An Application shall qualify to receive, or have deducted, as appropriate, eight (8) points for written statements from a Neighborhood Organization or a Home Owner Association (as established by Texas Property Code, Title 11, Chapter 209, known as the 'Texas Residential Property Owners Act'). In order for the statement to qualify for review, the Neighborhood Organization or Home Owner Association must have been in existence prior to the Pre-Application Final Delivery Date, and its boundaries must contain the Development Site or be within one linear mile from an edge of the Development's boundary to an edge of a Neighborhood Organization's or Home Owner Association's boundary. In addition, the Neighborhood Organization or Home Owner Association 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 by submitting documentation (such as evidence of board meetings, bylaws, etc.) not later than 30 days prior to the Full Application Delivery Date. Once a letter is submitted to the Department it may not be changed or withdrawn. The written statement must meet all of the requirements in subparagraph (A) of this paragraph. (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 or Home Owner Association'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 or association; (ii) certification that the boundaries of the Neighborhood Organization, or Home Owner Association, contain the Development Site or be within one linear mile from an edge of the Development Site's boundary to an edge of a Neighborhood Organization's or Home Owner Association's boundary and that the Neighborhood Organization or Home Owner Association 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, or Home Owner Association, including any votes taken; (iv) certification that at least 80 percent of the current membership of the Neighborhood Organization or Home Owner Association consists of persons residing or owning real property within the boundaries of the Neighborhood Organization or Home Owner Association; and (v) an explicit expression of support or opposition. 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 Quantifiable Community Participation (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 or lose 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 or against an Application, the average of all statements received in accordance with this subparagraph will be assessed and awarded. (i) eight (8) points for explicitly stated support from a Neighborhood Organization or Home Owner Association; or (ii) a deduction of eight (8) points for explicitly stated opposition from a Neighborhood Organization or Home Owner Association." Commenter (63) requested that proximity to developments be taken into consideration and that Home Owner Associations as well as Neighborhood Associations within one linear mile of proposed developments be allowed a voice.

STAFF RESPONSE: In response to commenter (32) staff agreed that the Department's process for registering Neighborhood Associations is duplicative and unnecessary and recommended removing the reference "includes the Department." In response to commenter (2) staff believed that the proposed rule comports with the express statutory requirements and recommended no change based on this comment. In response to commenter (63), the legislature identified neighborhood organizations which could impact the score of a development by including those boundaries contain the development site. Staff recommended no change based on this comment.

BOARD RESPONSE: Accepted Staff's recommendation.

22. §11.9(d)(5) - Selection Criteria - Community Support from State Representative (2), (3), (26), (32), (42)

COMMENT SUMMARY: Commenter (3) recommended the point value associated with these letters be modified to reflect +4 points for support, 0 points for neutrality and -4 points for letters of opposition. The justification provided by commenter

(3) stated that reducing the point range is still consistent with the legislative intent of ranking it the lowest point category under statute. Commenter (32) expressed concern that the proposed language is in conflict with the statutory language outlining the priority of the support letters, which ranks the priority, not the scoring and that the current 16 point spread between the +8 and -8 points gives those letters priority above neighborhood organizations. Commenter (32) recommended that positive letters should be worth 6 points and negative letters worth -2 points. In reducing the spread between positive and negative letters to 8 points, it would still comply with the statutory language. Commenter (26), (32) asserted that the Department has discretion in defining the terms upon which the points under this scoring item would be awarded and indicated that the segregative effect could be lessened by conditioning the award of positive and negative points based on a statement from the State Representative of reasons for the opposition and provide the developer with an opportunity to respond to the opposition. Commenter (2) recommended the following changes to this scoring item: "(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) Applications shall receive eight (8) points or have deducted 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 express 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 which fail to 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." Commenter (42) expressed concern regarding this scoring item on the basis that fair housing impediments and isolation of important constituents will result in cases where the state representative refuses to support housing for farmworkers; therefore, this scoring item should be eliminated or given other opportunity to cure so that housing is not denied for important constituents.

STAFF RESPONSE: In response to commenters (3), (32) staff believed that compressing the points associated with the letters conflicts with priorities created by statute, as established by the legislature and, in response to commenter (32) such priority is established in the score attributed to each of the scoring items. Moreover, the changes proposed by commenters (3), (32) would require re-publication and a necessary opportunity for additional public comment. In response to commenter (2) the plain language of statute does not limit the possibility of assigning varying point values associated with the letters even if no such distinction is anticipated. In response to commenter (42) this scoring item is a statutory requirement and therefore not one that staff can eliminate in the rule. Staff recommended no changes based on these comments.

BOARD RESPONSE: Accepted Staff's recommendation.

23. §11.9(d)(6) - Selection Criteria - Input from Community Organizations (2)

COMMENT SUMMARY: Commenter (2) contended that there is a systemic bias that heavily favors awarding tax credits in communities that oppose them and recommended the changes below on the basis that it would help level the playing field. "(6) Input from Civic and Community Organizations. (§2306.6725(a)(2))Where, at the time of Application, the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization or Home Owner Association or be within one linear mile from an edge of the Development's boundary to an edge of a qualifying Neighborhood Organization or Home Owner Association then, in order to ascertain if there is community support or opposition, an Application shall receive four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. Four (4) points will be awarded for letters in support, or deducted for letters in opposition, as applicable, under this point item under any circumstances. All letters must be submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. (A) An Application shall receive two (2) points for each letter of support, and shall have deducted two (2) points for each letter of opposition submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support or opposition must identify the specific Development and must express support of, or opposition to, the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide evidence 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 or opposition 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 or have points deducted, as the case might be. 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 shall receive two (2) points for a letter of support, and shall have deducted two (2) points for a letter of opposition 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 shall receive two (2) points for a letter of support, and shall have deducted two (2) points for a letter of opposition 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."

STAFF RESPONSE: In response to commenter (2), a plain reading of the statute does not allow for negative points for any scoring items other than State Representative letters. Staff recommended no changes based on this comment.

BOARD RESPONSE: Accepted Staff's recommendation.

24. §11.9(d)(7) - Selection Criteria - Concerted Revitalization Plan (3), (10), (21), (22), (26), (31), (32), (34), (35), (36), (45), (51), (89)

COMMENT SUMMARY: Commenter (3) expressed concern regarding the level of subjectivity relating to "sufficiently mitigated and addressed prior to the Development being placed in service" and further asserted that such language will only benefit neighborhoods that are at the end of their revitalization efforts. Commenter (3), (34) suggested the 2015 language with respect to this scoring item be reinstated. Similarly, commenter (10), (51) suggested that investment in affordable housing at the end of the revitalization process negates the positive impact such housing can have on an area that is on a positive revitalization trajectory and could make the purchase of the land impractical due to rising land costs in an area nearing the end of its redevelopment cycle. Commenter (10), (51) offered the following modification to this item: "(IV) The adopted plan must have sufficient, documented and committed funding, to the extent allowed by law or ordinance, to accomplish its purposes on its established timetable. This funding must have been flowing in accordance with the plan, such that the problems identified within the plan can reasonably be expected to be mitigated within a period of time commensurate with the plan's timeline prior to or after the Development has been placed into service." Commenter (10) disagreed with the manner in which points will be awarded; specifically that a city our county can only indicate one development as most significantly contributing to revitalization efforts in the area. Commenter (10) asserted that this underestimates the revitalization needs of urban areas and further offered the following modification: "(ii) Points will be awarded based on: (I) Applications will receive four (4) points for a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area based on the target efforts outline in the plan; and (II) An urban classified city or county may identify no more than three (3) Developments during each Application Round for the additional points under this subclause." Commenter (22), (32) expressed support for effectiveness at which the opening paragraph establishes the expectations of the characteristics of a revitalization area. Commenter (22) requested clarification with respect to the following sentence under subclause (III) relating to urban developments: "In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to..." Specifically, whether this sentence means that the city or county has programs/activities in progress that can be documented by are not necessarily described in the plan document? Commenter (26) expressed disagreement with the proposed changes to this scoring item, specifically, the delegation of such revitalization plans with the municipalities which is without standards for the conditions that must be addressed and without standards for the measurable improvements upon which the points are to be awarded. Commenter (26) suggested that the proposed language will allow for continued segregation in areas of slum and blight by making improvements that do not address significant elements thereof. By way of example, commenter (26) illustrated that a revitalization plan that calls for new sidewalks in an area of slum and blight could receive points even if there is partial completion of such sidewalk replacements. Commenter (26) asserted that there is no obligation to address other elements of slum and blight in order to achieve the points. Commenter (32) asserted that the framework of the scoring item lacks objective benchmarks and will become just another "letter from a local official," promising that the area is already looking better and will be great by the time the development is placed in service. Considering the fact that the local official can choose the measuring improvements to be used for documentation invites gaming of the process. To that end, commenter (32) recommended the Department look to three metrics over the past 3 years: census tract poverty, census tract income, and neighborhood land values relative to Place (Appraisal District) and that points under this scoring item should be awarded only if an application demonstrates a statistically significant improvement on two of these metrics over the 3 year timeframe since the date of the adoption of the revitalization plan. Commenter (32) acknowledged that this timeframe is longer than is currently proposed, it recognizes that true revitalization takes an extended commitment in local and private resources. Commenter (31), (36) stated identified concerns regarding the subjectivity of this scoring item and recommended the modifications below to add specificity. "(A) For Developments located in an Urban Area. (i) An Application may qualify to receive up to six (6) points if the Development Site is located in an area that has been identified by the municipality or county as needing concerted revitalization, and where a concerted revitalization plan has been developed and adopted. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems but smaller than the municipality or county as a whole. The concerted revitalization plan should meet the criteria described in subclauses (I) - (IV) of this clause: (I) The concerted revitalization plan must have been adopted by the municipality or county in which the Development Site is located prior to the pre-application deadline. (II) The problems in the revitalization area must have been identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems may include the following: (-a-) long-term disinvestment, such as significant presence of residential and/or commercial blight, infrastructure neglect such as inadequate drainage, and streets and/or sidewalks in significant disrepair; (-b-) declining quality of life for area residents, such as high levels of crime or overt illegal activities; and/or (-c-) lack of community assets that provide for the diverse needs of the residents such as access to supermarkets or healthy food centers, parks and activity centers. (III) Staff will review the plan for targeted efforts within the plan to address the problems identified within the plan. In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to: (-a-) attracting private sector development of housing and/or business; (-b-) developing health care facilities; (-c-) providing public transportation; (-d-) developing significant recreational facilities; and/or (-e-) improving under-performing schools. However, this supplemental information may not take the place of an adopted plan meeting the requirements I, II and IV of this section. The supplemental information may only provide evidence of plan goals and activities being carried out by the municipality or the county or funds being committed for the plan purposes. (IV) The adopted plan must identify sufficient and documented funding sources to accomplish its purposes on its established timetable. This funding must have commenced at the time of Application submission. (ii) Points will be awarded based on: (I) Applications will receive four (4) points for a letter from the appropriate local official certifying the identified revitalization area, that the development is located within the revitalization area, and that the plan meets

the requirements of subsections I, II and IV of this section; and commenter (31) indicated that in order to support the revitalization efforts in large cities, this scoring item should be modified to allow a city to designate more than one development as significantly contributing to revitalization, as reflected in the following: (II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified by the city or county as contributing significantly to the concerted revitalization efforts of the city or county (as applicable). A city or county may identify no more than three Developments 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, then not more than three of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application(s) as contributing significantly to concerted revitalization efforts." Commenter (45) suggested modifications as provided below that could address instances where cities may develop a revitalization plan in response to a natural disaster, which they believed would still align with the overall policy objective behind the scoring item. "(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems may include the following: (-a-) commercial blight, streets and/or sidewalks in significant disrepair; (-b-) long-term disinvestment, such as the significant presence of residential and/or declining quality of life for area residents, such as high levels of violent crime, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances or overt illegal activities; (-c-) destruction of property as a result of a natural disaster. (IV) The adopted plan must have sufficient, documented and committed funding to accomplish its purposes on its established timetable. While it will generally be expected that this funding would have been flowing in accordance with the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed prior to the Development being placed into service, plans that are more recently adopted due to events that created cause for such a plan may be considered if sufficient evidence is provided to indicate that it is reasonable to expect that the goals of the plan will be able to be met." Commenter (32) expressed the opinion that developing health care facilities under (A)(i)(III)(-b-) of this scoring item does not augment a desirable neighborhood and further stated that there is a long tradition of relegating clinics and public hospitals to areas with low land values and few residential amenities. As a result, commenter (32) recommended this option be deleted from this scoring item. Commenter (21) indicated that while they are in agreement that concerted revitalization in a rural area is separate and distinct from an urban area, they expressed an objection to the disparity in points and recommended the scoring be adjusted, without increasing the requirements, so that revitalization in both areas would yield the same point value. Commenter (35) asserted that the proposed changes to this scoring item are too restrictive and further suggested that HUD's Site and Neighborhood standards guidance would be helpful in drafting this scoring item that is consistent with HUD's interpretation of the Fair Housing Act. Commenter (35) further added that HUD has always carved out an exception for revitalizing areas in the Site and Neighborhood Standards and that examples of such areas can be found in 24 CFR 983.57(e)(3)(vi). These "revitalizing areas" as defined by HUD would capture those gentrifying areas where there is revitalization and significant private investment; therefore, commenter (35) urged the Department to adopt HUD's definition of a revitalizing area as qualifying for full points under this scoring item. Commenter (89) expressed concern over the possibility for applicant's to orchestrate the development of a revitalization plan to receive points, despite the proposed changes. In an effort to prevent this, commenter (89) suggested this scoring item be modified such that only revitalization plans that show true community input should be eligible for the points; simply showing evidence that notice has been given to the public does not constitute public input. Further, if no one in the community is interested in providing comments, it is unlikely that the plan represents a legitimate need or effort to revitalize the area. Moreover, commenter (89) suggested that plans less than 6 months old should not be accepted, but that the plans must have started at least 6 months prior to the application deadline; and lastly, there should be no involvement on the part of any member of the Development Team in the formulation of such plan; it must be developed at the direction of the local government and without involvement of the applicant.

STAFF RESPONSE: Staff agreed with the additional clarification regarding infrastructure neglect as recommended by commenter (31), (36) and made the change accordingly. In response to commenter (10) and (31), staff believed that identifying only one development as most significantly contributing to the concerted revitalization efforts of the city or county where the area being revitalized continues to be appropriate. Allowing for the scoring boost for multiple revitalization-based developments represents a potential impetus for rapid concentration and a disproportionate utilization of limited resources. Furthermore, staff was concerned that the failure to achieve an award for all of the developments identified as most significantly contributing could undermine the ability to sufficiently mitigate issues identified in the plan prior to the subject development being placed into service. In response to commenter (26), staff agreed that the example provided of sidewalk replacement could be considered part of a revitalization plan for some fund sources and programs, but believed that this is not the case for this scoring item. The described revitalization plan would not meet the requirements of this section. In response to commenter (32), staff believed that the suggested measures would not provide a reliable measurement of the impact of all concerted revitalization plans. The measurements could be used to support the application for this scoring item. In response to commenters (31), (36), staff believed that the section as drafted provides sufficient description of the requirements for an acceptable revitalization plan without removing necessary flexibility. In response to commenter (45), developments in counties that have been proclaimed disaster areas within the preceding three years already have a scoring incentive. Further, staff believed that disaster recovery is not a revitalization effort. In response to commenter (32), no evidence was provided to support the comment that health care facilities do not augment a desirable neighborhood, and in fact, proximity to medical care is a community asset in other scoring items. Staff believed that the example is appropriate. In response to commenter (21), the concerted revitalization plan described for urban areas supports local efforts to remove longstanding blighting influences in specific areas, while the measures for rural communities address efforts to create continued economic growth. Because these are 2 distinct requirements, staff believed the scoring is appropriate. In response to commenter (35), while HUD's Site and Neighborhood standards guidance, generally, may contain useful mea-

sures and definitions, staff believed that the proposed rule more appropriately addresses this issue. Further, the depth of analysis required to determine if a wholesale adoption of federal guidance in this area is appropriate in all cases, and achieves the purposes of the rule, exceeds the time constraints of this rule-making proposal. Finally, the extent of the changes to the scope of the proposed rule as suggested by the Commenter, and incorporation of the HUD Site and Neighborhood Standards and/or the HUD definition of "a revitalizing area," would require renewing the rule-making process and re-publication prior to adoption. In response to commenter (89), staff believed that imposing requirements on units of local government that impact the way they conduct business would be overreaching and inappropriate.

BOARD RESPONSE: Accepted Staff's recommendation.

25. §11.9(e)(2) - Selection Criteria - Cost of Development per Square Foot (1), (3), (21), (23), (25), (27), (31), (35), (36), (48), (49)

COMMENT SUMMARY: Commenter (1), (23) expressed support for the inclusion of 50 square feet of common area space into the net rentable area calculation. However, commenter (1) indicated that this scoring item, in all of the categories, failed to reflect changes due to increases in construction costs and further indicated that such costs differ between four-story, elevator-served general population developments and that of single room occupancy supportive housing and the categories should therefore be distinct. According to commenter (1), supportive housing developments have less of the cheaper square footage to build, but more cost per square foot of the more expensive square footage (plumbing, electrical, HVAC). Commenter (1), (23) suggested the following modifications to this scoring item: "(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 $90 per square foot; (ii) The Building Cost per square foot is less than $95 per square foot, and the Development meets the definition of a high cost development; (iii) The Building Cost per square foot is less than $125 per square foot, and the Development meets the definition of both a high cost development and a single room occupancy Supportive Housing development; (iv) The Hard Cost per square foot is less than $110 per square foot; (v) The Hard Cost per square foot is less than $120 per square foot, and the Development meets the definition of high cost development; or (vi) The Hard Cost per square foot is less than $150 per square foot, and the Development meets the definition of both a high cost development and a single room occupancy Supportive Housing development." Commenter (3), (31), (36), (48) recommended the calculations in this scoring item be increased by $10 per square foot, at a minimum, further stating that the current language does not account for recent construction cost increases which, according to these commenters have been 8-12% per annum over the last three years. Commenter (49) recommended an increase of cost per square foot limitations by 15% to account for actual hard cost increases and inflation since 2013. Commenter (21) recommended an increase of $10, but preferably by $12 per square foot and further requested that subparagraphs (A)(iv) and (E)(ii) of this item be updated to correspond with the proposed scoring point changes relating to the Opportunity Index. Along these lines, commenter (3), (49) suggested the following revision within this item: "(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met: (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, if the Development is considered a high cost development or 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.." Commenter (25) stated the cost per square foot threshold for adaptive reuse or acquisition/rehabilitation was low for scoring purposes and further suggested that for those that include 100% historic development, the costs should exceed 20% of the allowable threshold. Commenter (27) indicated that this scoring items needs to be modified to account for the considerations made under the historic preservation scoring item, specifically, to make them competitive. When dealing with historic structures, according to commenter (27), the current $130/SF limitation is unachievable and recommends the following modification: "(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; (iii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $175 per square foot, that qualify for points under subsection (e)(6) of this section, related to Historic Preservation; or (iv) Eleven (11) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $130 per square foot, or $200 per square foot for Applications that qualify for points under subsection (e)(6) of this section, related to Historic Preservation." Commenter (35) asserted that a more constructive approach to this scoring item would be to cap the amount of tax credits generated by their hard costs in order to qualify for points. In doing so, according to commenter (35) it would involve a policy choice with the same logic as in the 2015 QAP of disregarding certain costs and space; however, it would encourage more due diligence and full disclosure at application. To achieve this, commenter (35) requested the following sentence be added to the end of this scoring item: "This calculation does not include Hard Costs voluntarily excluded from eligible basis."

STAFF RESPONSE: In response to the commenters, the providing of scoring incentives for cost per square foot should not be conflated with the operation of other rules, chiefly underwriting rules, to allow for increased costs.

SUPPLEMENTAL STAFF RESPONSE: However, in order to fully implement proposed changes under paragraph 4 (relating to the Opportunity Index) staff recommended a clerical change to allow access to the points under the subject paragraph under (A) (iv) for an application receiving at least 5 points under the opportunity index rather than the 5 or 7 points identified in the published draft. The change was as follows: "(iv) the Development Site qualifies for a minimum of five (5) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area."

BOARD RESPONSE: Accepted Staff's recommendation.

26. §11.9(e)(4) - Selection Criteria - Leveraging of Private, State and Federal Resources (1)

COMMENT SUMMARY: Commenter (1) suggested staff allow supportive housing developments that do not have third party hard debt be allowed the tolerance under clause (i) of this scoring item to increase to the 9% leveraging rate. It is the assertion of

commenter (1) that a supportive housing application will always reflect the maximum amount of credits in order to help bridge the gap that can't be supported with debt and further stated that such structure ensures that these developments will almost always have a larger percentage of tax credits to total development costs. Commenter (1) further indicated that the types of funding sources currently allowed under clause (i) are eligible for hard debt and therefore this scoring item is not equitable with that of supportive housing which are fundamentally different in this regard. Commenter (1) recommended the leveraging percentages in this scoring item be increased 1% for supportive housing developments with no permanent debt as reflected in the following: "(i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding or the Development is Supportive Housing 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"

STAFF RESPONSE: This item provides points for leveraging of several fund sources, rather than types of developments. Supportive Housing developments that use any of these fund sources in their financing structure are able to gain these points if Housing Tax Credit Funding Request is less than 9 percent of the Total Housing Development Cost. Staff recommended no change based on this comment.

BOARD RESPONSE: Accepted Staff's recommendation.

27. §11.9(e)(6) - Selection Criteria - Historic Preservation (4), (21), (27), (32), (45), (64), (65), (66), (67), (68), (69), (70), (71), (72), (73), (74), (75), (76), (77), (78), (79), (80), (81), (82), (83), (84), (85), (86), (87), (88)

COMMENT SUMMARY: Commenter (27) expressed support for the changes to this scoring item but believes further changes are necessary relating to the percentage of units required to be maintained within the historic structure. The current language that requires 75% of the units be maintained is excessive and does not account for historic structures that are small and cannot accommodate enough units to make redevelopment financially feasible unless new units are added to the site. Commenter (27) recommended a decrease in the percentage to 40%. Commenter (4) asserted that with the proposed changes to the point value associated with this item, it is possible to have a historic preservation application with a revitalization plan outscore a 7-point high opportunity application with top schools which, according to commenter (4), should not be encouraged over high opportunity areas that are inherently in high income, low poverty, and high performing areas, characteristics which differ from the locations in which historic developments are found. Commenter (4), (45) recommended the point value be reduced from 5 points to 2 points and further maintained that based on where historic preservation was inserted into the legislation the point value is too high and should be consistent with neighboring point items. Commenter (4) further asserted that in a practical sense, this is a location specific criteria, and therefore could undermine the objectives of the Remedial Plan and specifically the Opportunity Index if given too much weight. Commenter (45) recommended the following modification: "(6) Historic Preservation. (§2306.6725(a)(5)) An Application 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) may qualify to receive up to two (2)points. 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. The Application must include either documentation from the Texas Historical Commission that the property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status." Commenter (32) opposed the proposed changes to this scoring item which they believed increase the emphasis on historic structures relative to other factors far beyond what is necessary to comply with SB 1316. Commenter (32) maintained that the 2015 point value suitably prioritize historic buildings over new construction when they are in areas with opportunity for the families within them, or when they are in areas that have undergone the comprehensive revitalization necessary to provide opportunity to the families. Commenter (21), (64), (65), (66), (67), (68), (69), (70), (71), (72), (73), (74), (75), (76), (77), (78), (79), (80), (81), (82), (83), (84), (85), (86), (87), (88) expressed support for the proposed changes to this scoring item which would allow for these existing historic structures within a city to be restored as a vibrant asset to the community.

STAFF RESPONSE: In response to commenter (27), staff believed that the Historic Preservation points are to encourage the re-development of affordable units within a historic property, and as such believes that a significant majority of the units should be contained within the historic structure. In response to commenters (4), (45), staff agreed in part with the potential for a Historic Preservation Development in a Concerted Revitalization Area outscoring a Development in a High Opportunity Area with maximum Educational Excellence points. To address this possibility, staff recommended a reduction in points for Historic Preservation of two (2) points when the Development also qualifies for one (1) or three (3) points under Educational Excellence. Staff recommended the following change: "(6) Historic Preservation. (§2306.6725(a)(5)) Except for Developments that qualify for one (1) or three (3) points under Educational Excellence §11.9 (c)(5), an Application 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) may qualify to receive five (5) points. Developments that qualify for one (1) or three (3) points under Educational Excellence §11.9 (c)(5) 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) may qualify to receive three (3) points. At least seventy-five percent of the residential units shall reside within the Certified Historic Structure and the Development must reasonably be expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609. The Application must include either documentation from the Texas Historical Commission that the property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status."

BOARD RESPONSE: Accepted Staff's recommendation.

28. §11.9(f) - Point Adjustments (22)

COMMENT SUMMARY: Commenter (22) suggested that while paragraph (2) under this item identifies violations that should be considered, the opening sentence of the item does not specifically allow a point deduction for such violations and therefore requested clarification.

STAFF RESPONSE: In response to commenter (22), staff believed that the item provides sufficient authority for adjustment of points in response to violations. Staff recommended no changes based on this comment.

BOARD RESPONSE: Accepted Staff's recommendation.

29. §11.9(f) - Third Party Request for Administrative Deficiency (21), (34)

COMMENT SUMMARY: Commenter (21) expressed support for the proposed changes to this section and requested the Department post the application deficiencies and applicant responses to the website throughout the review period. In doing so, commenter (21) believed it would alleviate the administrative burden of the Department as well as increase the transparency of the review process. Commenter (34) recommended such third party requests be limited to one submission per application by any single third party requestor and further maintained that even with such limitation the Department will receive multiple requests from related persons, each of who would qualify as a "third party." Commenter (34) indicated that this potential may hinder the evaluation process if the June 1 deadline is used and as a result suggested an earlier deadline be implemented.

STAFF RESPONSE: In response to commenter (21) staff intended to update the applications that are posted on the website as reviews are done. As applications are reviewed and deficiencies are resolved, the application posted to the web will be updated nightly with the most current information received in response to staff's review. In this respect, the public will have access to the same information staff has and they can use that information to determine whether to proceed with a third party request for administrative deficiency. In response to commenter (34), the number of third party requests will not be limited, as new information may trigger the need for a new submission. If staff identifies multiple requests from related persons, staff will endeavor to evaluate them as a single request but may, as dictated by resource constraints or deemed appropriate, take them up separately. Staff recommended no changes based on this comment.

BOARD RESPONSE: Accepted Staff's recommendation.

INDEX OF COMMENTERS

(1) Foundation Communities

(2) Don Zimmerman, Austin City Councilman

(3) Texas Affiliation of Affordable Housing Providers

(4) Alyssa Carpenter

(5) Palladium USA

(6) Chris Boone, City of Beaumont

(7) Rural Rental Housing Association of Texas

(8) Fountainhead Management, Inc.

(9) Dennis Hoover

(10) Houston LISC

(11) Alan Warrick, San Antonio City Councilman

(12) Ivy Taylor, Mayor of San Antonio

(13) Pedro Martinez, San Antonio Independent School District

(14) United Way of San Antonio

(15) Congressman Lloyd Doggett

(16) VIA Metropolitan Transit San Antonio

(17) San Antonio Housing Authority

(18) Tommy Calvert, Bexar County Commissioner

(19) R.L. "Bobby" Bowling IV

(20) Brad McMurray

(21) Structure Development

(22) Cynthia Bast, Lock Lord

(23) New Hope Housing

(24) Mary Henderson

(25) Vecino Group

(26) Daniel & Beshara, P.C.

(27) Brownstone Affordable Housing

(28) Arx Advantage, LLC

(29) Hettig-Kahn

(30) Housing Lab by BETCO

(31) Marque Real Estate Consultants

(32) Texas Appleseed/Texas Low Income Housing Information Service

(33) Casa Linda Development Corporation

(34) Barry Palmer, Coats Rose

(35) Scott Marks, Coats Rose

(36) Texas Coalition of Affordable Developers

(37) Terri Anderson

(38) National Housing Trust

(39) Darrell Jack

(40) Madhouse Development Services

(41) Judy Telge, Coastal Bend Center for Independent Living

(42) Motivation Education & Training, et al.

(43) Kim Schwimmer

(44) Christopher Myers

(45) Pedcor Investments

(46) Jen Joyce Brewerton, Dominium

(47) Jessica Perez, Capstone Management

(48) M Group

(49) National Church Residences

(50) DMA Development Company

(51) Texas Association of Community Development Corporations

(52) Cayetano Housing

(53) Disability Rights Texas

(54) Easter Seals Central Texas

(55) Eduardo Requena

(56) Ines Medrano

(57) Jannathan Fam

(58) John McMillian

(59)Mimay Phim

(60)Portia Haggerty

(61)Thy Phamnguyen

(62) Wanda Posteal

(63) Deborah Thompson, Wells Branch Neighborhood Association

(64) Wendell Dunlap, Mayor of Plainview,

(65) Christopher Fielder, Mayor of Leander

(66) Roxanne Johnston, City of Big Spring

(67) Tracy Cox, City of San Augustine

(68) Jason Weger, Cisco City Councilman

(69) Tim Barton, Cisco ISD

(70) Suzonne Franks

(71) James King, Mayor of Cisco

(72) Cisco Economic Development Corporation

(73) Wilks Brothers, LLC

(74) Michael Cary, Prosperity Bank, Cisco

(75) Myrtle Wilks Community Center

(76) Patrick Hoiby, Equify, LLC

(77) Breckenridge Exploration Co., Inc.

(78) Board of Trustees, Cisco ISD

(79) Cisco Chief of Police

(80) Tammy Osborne, City of Cisco

(81) Cisco Chamber of Commerce

(82) Phil Green, Cisco City Councilman

(83) Keep Cisco Beautiful Organization

(84) Peggy Ledbetter, Interim Cisco City Manager

(85) Tammy Douglas, Cisco City Councilwoman

(86) Matt Johnson, Cisco Post Master

(87) Russell Thomason, Criminal District Attorney

(88) Dennis Campbell, Cisco City Councilman

(89) Columbia Residential

(90) Jill Rafferty, Studewood Community Initiative

(91) Monica Washburn

(92) State Representative Ryan Guillen

STATUTORY AUTHORITY. The new sections are adopted 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.

§11.2. Program Calendar for Competitive Housing Tax Credits.

Non-statutory deadlines specifically listed in the Program Calendar may be extended 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 and has established to the reasonable satisfaction of the Executive Director that there is good cause for the extension. Except as provided for under 10 TAC §1.1 relating to Reasonable Accommodation Requests, 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

§11.4. Tax Credit Request and Award Limits.

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater than $3 million in a single Application Round. All entities that are under common Control are Affiliates. For purposes of determining the $3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate or Guarantor solely because it:

(1) raises or provides equity;

(2) provides "qualified commercial financing;"

(3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or

(4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments and other Developments in which an entity that is exempt from federal income taxes owns at least 50% of the General Partner) to be paid or $150,000, whichever is greater.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the sub-region based on estimates released by the Department on December 1, or $1,500,000, whichever is less, or $2,000,000 for Applications under the At-Risk Set-Aside. In addition, for Elderly Developments in a Uniform State Service Region containing a county with a population that exceeds one million, the request may not exceed the final amount published on the Department's website after the release of the Internal Revenue Service notice regarding the 2016 credit ceiling. For all Applications, the Department will consider the amount in the Funding Request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than $2 million in a single Application Round. (§2306.6711(b))

(c) Increase in Eligible Basis (30 percent Boost). Applications will be evaluated for an increase of up to but not to exceed 30 percent in Eligible Basis provided they meet the criteria identified in paragraphs (1) - (3) of this subsection, or if required under §42 of the Code. Staff will recommend no increase or a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. The criteria in paragraph (3) of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the 5-year American Com-

munity Survey. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20 percent Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. For New Construction or Adaptive Reuse Developments located in a QCT with 20 percent or greater Housing Tax Credit Units per total households, the Development is eligible for the boost if the Application includes a resolution stating that the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and referencing this rule. 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. Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT.

(2) The Development is located in a Small Area Difficult Development Area (SADDA) (based on Small Area Fair Market Rents (FMRs) as determined by the Secretary of HUD) that has high construction, land and utility costs relative to the AMGI. For Tax-Exempt Bond Developments, as a general rule, an SADDA designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. Applicants must submit a copy of the SADDA map that clearly shows the proposed Development is located within the boundaries of a SADDA.

(3) The Development meets one of the criteria described in subparagraphs (A) - (E) of this paragraph pursuant to §42(d)(5) of the Code:

(A) the Development is located in a Rural Area;

(B) the Development is proposing entirely Supportive Housing and is expected to be debt free or have no foreclosable or non-cash flow debt;

(C) the Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria);

(D) the Applicant elects to restrict an additional 10 percent of the proposed low income Units for households at or below 30 percent of AMGI. These Units must be in addition to Units required under any other provision of this chapter; or

(E) the Development is not an Elderly Development and is not located in a QCT that is in an area covered by a concerted revitalization plan. A Development will be considered to be in an area covered by a concerted revitalization plan if it is eligible for and elects points under §11.9(d)(7) of this chapter.

§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. In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Texas Government Code, §2306.6711(h) and will publish such percentages on its website.

(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. In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Texas Government Code, §2306.6711(h) and will publish such percentages on its website. This process will continue until the funds remaining are insufficient to award the next highest scoring Application 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 the Board determines that all of the requirements of this paragraph are met to its satisfaction, be allocated separately from the current year's tax credit allocation, and 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 the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a Force Majeure event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. Force Majeure events must make construction activity impossible or materially impede its progress;

(B) Acts or events caused by the negligent or willful act or omission of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by Force Majeure;

(C) A Development Owner claiming Force Majeure must provide evidence of the type of event, as described in subpara-

graph (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 in a census tract with the lowest poverty rate as compared to another Application with the same score.

(3) The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site, or (for "choice" districts) the closest.

(4) 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.

§11.9. 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. When providing a pre-application, Application or other materials to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure support or approval that may affect the Applicant's competitive posture, an Applicant must disclose that in accordance with the Department's rules aspects of the Development may be subject to change, including, but not limited to, changes in the amenities ultimately selected and provided.

(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)) An Application may qualify to receive one (1) point if 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)(E)) 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 proposed by a Qualified Nonprofit or for Developments participating in the City of Houston's Permanent Supportive Housing ("HPSH") program. A Development participating in the HPSH program and electing points under this subparagraph must have applied for HPSH funds by the Full Application Delivery Date, must have a commitment of HPSH funds by Commitment, must qualify for a minimum of five (5) 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)(G) and §2306.6725(a)(1)) A Supportive Housing Development proposed by a Qualified Nonprofit or Developments participating in the HPSH 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 HPSH program and electing eleven (11) points under this paragraph must have applied for HPSH funds by the Full Application Delivery Date, must have a commitment of HPSH funds by Commitment, must qualify for a minimum of five (5) 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 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.

(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) - (v) of this subparagraph. The Department will base poverty rate on data from the five (5) year American Community Survey.

(i) 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 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, has achieved a 77 or greater on index 1 of the performance index, related to student achievement, and has earned at least one distinction designation by TEA (6 points);

(iii) 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);

(iv) 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

(v) 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) - (vi) 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 of an elementary, middle, or high school that has achieved the performance standards stated in subparagraph (B). (Note that if the school is more than 2 miles from the Development Site, free transportation must be provided by the school district in order to qualify for points. For purposes of this subparagraph 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 will not be considered.) (3 points);

(ii) The Development Site is within 1.5 linear miles 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 1.5 linear miles of a full service grocery store (2 points);

(iv) The Development Site is located within 1.5 linear miles of a center that is licensed by the Department of Family and Protective Services to provide a child care program for infants, toddlers, and/or pre-kindergarten, at a minimum (2 points);

(v) The Development Site is located within 1.5 linear miles of a senior center (2 points); and/or

(vi) The Development Site is located within 1.5 linear miles 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 rating of the closest elementary school that may possibly be attended by the tenants. The applicable school rating will be the 2015 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. Except for Supportive Housing Developments, an Application may qualify to receive up to five (5) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A) - (C) of this paragraph, as determined by the Texas Education Agency. A Supportive Housing Development may qualify to receive no more than two (2) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A) and (B) of this paragraph, as determined by the Texas Education Agency. 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 rating of the closest elementary, middle, or high schools, respectively, which may possibly be attended by the tenants. The applicable school rating will be the 2015 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 a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (5 points, or 2 points for a Supportive Housing Development);

(B) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points; (3 points, or 2 points for a Supportive Housing Development); or

(C) The Development Site is within the attendance zone of an elementary school, a middle school and a high school either all with a Met Standard rating or any one of the three schools with Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points. (1 point)

(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive up to two (2) points if the Development Site is located in one of the areas described in subparagraphs (A) - (E) of this paragraph, and the Application contains evidence substantiating qualification for the points. If an Application qualifies for points under paragraph (4) of this subsection then the Application is not eligible for points under subparagraphs (A) and (B) of this paragraph.

(A) The Development Site is located wholly or partially within the boundaries of a colonia as such boundaries are determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border. For purposes of this scoring item, the colonia must lack water, wastewater, or electricity provided to all residents of the colonia at a level commensurate with the quality and quantity expected of a municipality and the proposed Development must make available any such missing water, wastewater, and electricity supply infrastructure physically within the borders of the colonia in a manner that would enable the current dwellings within the colonia to connect to such infrastructure (2 points);

(B) An Economically Distressed Area (1 point);

(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 serving the same Target Population which remains an active tax credit development (2 points);

(D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-compet-

itive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population (2 points);

(E) A census tract that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development serving the same Target Population that remains an active tax credit development or if it is serving the same Target Population then it has not received the allocation within the past 10 years (1 point);

(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive up to two (2) points by serving Tenants with Special Housing Needs. Points will be awarded as described in subparagraphs (A) - (C) of this paragraph.

(A) Applications may qualify for two (2) points if a determination by the Department of approval is submitted in the Application indicating participation of an existing Development in the Department's Section 811 Project Rental Assistance Demonstration Program ("Section 811 PRA Program"). In order to qualify for points, the existing Development must commit to the Section 811 PRA Program at least 10 units or, if the proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application.

(B) Applications meeting all of the requirements in clauses (i) - (v) of this subparagraph are eligible to receive two (2) points by committing to participate in the Department's Section 811 PRA Program. In order to be eligible for points, Applicants must commit at least 10 Units in the proposed Development for participation in the Section 811 PRA Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 PRA Program guidelines and requirements limits the proposed Development to fewer than 10 Units. 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 have the proposed Development participate in the Section 811 PRA Program unless the Department determines that the Development cannot meet all of the Section 811 PRA Program criteria. In this case, staff may allow the Application to qualify for points by meeting the requirements of subparagraph (C) of this paragraph.

(i) The Development must not be an Elderly Limitation Development or Supportive Housing;

(ii) The Development must not be originally constructed before 1978;

(iii) The Development has units available to be committed to the Section 811 PRA Program in the Development, meaning that those units do not have any other sources of project-based rental or long-term operating assistance within 6 months of receiving 811 assistance and cannot have an existing restriction for persons with disabilities;

(iv) The Development Site must be located in one of the following areas: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Corpus Christi MSA; Dallas-Fort Worth-Arlington MSA; El Paso MSA; Houston-The Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA; and

(v) The Development Site must not be located in the mapped 500-year floodplain or in the 100-year floodplain.

(C) Applications proposing Developments that do not meet all of the requirements of clauses (i) - (v) of subparagraph (B) 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 at least 5 percent of the total Units for Persons with Special Needs. For purposes of this subparagraph, 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 farmworkers. 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.

(8) Proximity to Important Services. An Application may qualify to receive up to two (2) points for being located within a one and a half (1.5) mile radius or three (3) mile radius for Developments in a Rural Area of the services listed below. These do not need to be in separate facilities to qualify for the points. A map must be included identifying the Development Site and the location of each of the services.

(A) Full Service Grocery Store (1 point);

(B) Pharmacy (1 point).

(d) Criteria promoting community support and engagement.

(1) Local Government Support. (§2306.6710(b)(1)(B)) An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) - (C) of this paragraph, as applicable. The resolution(s) must be dated prior to Final Input from Elected Officials Delivery Date and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 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 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. Once a resolution is submitted to the Department it may not be changed or withdrawn. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

(A) Within a municipality, the Application will receive:

(i) seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(B) Within the extraterritorial jurisdiction of a municipality, the Application may receive points under clause (i) or (ii) of this subparagraph and under clause (iii) or (iv) of this subparagraph:

(i) eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; and

(iii) eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(iv) seven (7) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

(i) seventeen (17) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(ii) fourteen (14) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6725(a)(5)) An Application may receive one (1) point for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction over the proposed Development stating they will provide a loan, grant, reduced fees or contribution of other value for the benefit of the Development. Once a letter is submitted to the Department it may not be changed or withdrawn.

(3) Declared Disaster Area. (§2306.6710(b)(1)(H)) An Application may receive ten (10) points if at the time of Application submission or at any time within the two-year period preceding the date of submission, the Development Site is located in an area declared to be a disaster area under the Texas Government Code, §418.014.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(J); §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 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.) not later than 30 days prior to the Full Application Delivery Date. Once a letter is submitted to the Department it may not be changed or withdrawn. The written statement must meet all of the requirements in subparagraph (A) of this paragraph.

(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 sup-

port or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;

(v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; or

(vi) zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such statement is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date May 1, 2016. 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)(J); §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. (§2306.6725(a)(2)) Where, at the time of Application, 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. Once a letter is submitted to the Department it may not be changed or withdrawn. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item.

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide evidence 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) Concerted 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.

(i) An Application may qualify to receive up to six (6) points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems. The concerted revitalization plan that meets the criteria described in subclauses (I) - (IV) of this clause:

(I) The concerted revitalization plan must have been adopted by the municipality or county in which the Development Site is located.

(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems may include the following:

(-a-) long-term disinvestment, such as significant presence of residential and/or commercial blight, streets infrastructure neglect such as inadequate drainage, and/or sidewalks in significant disrepair;

(-b-) declining quality of life for area residents, such as high levels of violent crime, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances or overt illegal activities;

(III) Staff will review the target area for presence of the problems identified in the plan and for targeted efforts within the plan to address those problems. In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to:

(-a-) attracting private sector development of housing and/or business;

(-b-) developing health care facilities;

(-c-) providing public transportation;

(-d-) developing significant recreational facilities; and/or

(-e-) improving under-performing schools.

(IV) The adopted plan must have sufficient, documented and committed funding to accomplish its purposes on its established timetable. This funding must have been flowing in accordance with the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed prior to the Development being placed into service.

(ii) Points will be awarded based on:

(I) Applications will receive four (4) points for a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area based on the target efforts outlined in the plan; and

(II) Applications may receive (2) points in addition to those under subclause (I) 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 a Rural Area.

(i) The requirements for concerted revitalization in a Rural Area are distinct and separate from the requirements related to concerted 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.

(ii) To qualify under clause (i) 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 signa-

ture and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party construction or permanent lender. In addition to the signed pro forma, a lender approval letter must be submitted. An acceptable form of lender approval letter may be obtained in the Uniform Multifamily Application Templates. If the letter evidences review of the Development alone it will receive 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)(F); §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. If the proposed Development is a Supportive Housing Development, the NRA will include common area up to 50 square feet per Unit.

(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 Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;

(ii) the Development is more than 75 percent single family design;

(iii) the Development is Supportive Housing; or

(iv) the Development Site qualifies for a minimum of five (5) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area.

(B) Applications proposing New Construction or Reconstruction 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 (6) 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. (§§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)) 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.

(6) Historic Preservation. (§2306.6725(a)(5)) Except for Developments that qualify for one (1) or three (3) points under Educational Excellence §11.9 (c)(5), an Application 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) may qualify to receive five (5) points. Developments that qualify for one (1) or three (3) points under Educational Excellence §11.9 (c)(5) 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) may qualify to receive three (3) points. At least seventy-five percent of the residential units shall reside within the Certified Historic Structure and the Development must reasonably be expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609. The Application must include either documentation from the Texas Historical Commission that the property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status.

(7) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with 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).

(8) 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 determined by the application of the regional allocation formula on or before December 1, 2015.

(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.

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 December 17, 2015.

TRD-201505705
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3344

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CHAPTER 12. MULTIFAMILY HOUSING REVENUE BOND RULES

10 TAC §§12.1 - 12.10

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 12, §§12.1 - 12.10, concerning the 2015 Multifamily Housing Revenue Bond Rules, without changes to the proposed text as published in the October 30, 2015, of the *Texas Register* (40 TexReg 7547). The rules will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections and improve the Private Activity Bond Program. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between October 30, 2015, and November 30, 2015. Comments regarding the repeals were accepted in writing and by fax. No comments were received concerning the repeals.

The Board approved the final order adopting the repeal on December 17, 2015.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt 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.

Filed with the Office of the Secretary of State on December 18, 2015.

TRD-201505826
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: October 30, 2015
For further information, please call: (512) 475-3929

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10 TAC §§12.1 - 12.10

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 12, §§12.1 - 12.10, concerning Multifamily Housing Revenue Bond Rules. Section 12.6 is adopted with changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7548). Sections 12.1 - 12.5 and 12.7 - 12.10 are adopted without changes and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the rules will improve the Private Activity Bond Program and achieve consistency with other multifamily programs. Changes made to §12.6 were done so to be consistent with 10 TAC Chapters 10 and 11.

The Board approved the final order adopting the new sections on December 17, 2015.

The Department accepted public comments between October 30, 2015, and November 30, 2015. Comments regarding the proposed new sections were accepted in writing and by fax. No comments were received concerning the proposed new sections.

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

§12.6. Pre-Application Scoring Criteria.

This 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 Development per 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, as originally provided in the pre-application. This calculation does not include indirect construction costs. Pre-applications that do not exceed $95 per square foot of Net Rentable Area will receive one (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) provided they are requested in the Private Activity Bond Pre-Application Scoring Form.

(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 Affordability Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of (3 points).

(6) Common Amenities. All Developments must provide at least the minimum threshold of points for common amenities based on the total number of Units in the Development as provided in subparagraphs (A) - (F) of this paragraph. The common amenities include those listed in §10.101(b)(5) of this title and must meet the requirements as stated therein. The Owner may change, from time to time, the amenities offered; however, the overall points as selected at Application must remain the same. 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.

(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 and must be maintained throughout the Affordability Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. The services provided should be those that will directly benefit the Target Population of the Development and accessible to all. 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. All services must be provided by a person on the premises.

(8) Underserved Area. An Application may qualify to receive up to (2 points) if the Development Site is located in an Underserved Area as further described in §11.9(c)(6)(A) - (E) of this title.

(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.

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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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3929

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 9. LP-GAS SAFETY RULES

SUBCHAPTER A. GENERAL REQUIREMENTS

16 TAC §§9.2, 9.6, 9.10, 9.13, 9.14, 9.51, 9.52

The Railroad Commission of Texas (Commission) adopts amendments to §9.2, relating to Definitions; §9.6, relating to Licenses and Fees; §9.10, relating to Rules Examination; §9.13, relating to General Installers and Repairman Exemption; new §9.14, relating to Military Fee Exemption; and amendments to §9.51, relating to General Requirements for LP-Gas Training and Continuing Education; and §9.52, relating to Training and Continuing Education Courses, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7324). The Commission adopts the amendments and new rule pursuant to Senate Bill (SB) 807, 84th Legislature (2015), which added §55.009 to Texas Occupations Code, Chapter 55, requiring a state agency which issues a license to waive the license application and examination fees for an applicant who is a military service member, military veteran, or military spouse, in certain situations.

The Commission adopts new §9.14 to address the requirements and procedure for the military fee exemption. The Commission adopts amendments to §§9.6, 9.10, and 9.13 to add a reference to new §9.14.

The Commission adopts amendments in §§9.2, 9.10, 9.51 and 9.52 to address the Commission's recent domain name change for its web site and email addresses.

The Commission received no comments on the proposal.

The Commission adopts the amendments and new rule under Texas Natural Resources Code, §113.051, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; and Texas Occupations Code, §55.009, which requires the Commission to waive the license application and examination fees for a military service member, military veteran, or military spouse in certain situations.

Texas Natural Resources Code, §113.051, and Texas Occupations Code, §55.009, are affected by the adopted amendments and new rule.

Statutory authority: Texas Natural Resources Code, §113.051, and Texas Occupations Code, §55.009.

Cross-reference to statute: Texas Natural Resources Code, §116.012, and Texas Occupations Code, §55.009.

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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Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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CHAPTER 13. REGULATIONS FOR COMPRESSED NATURAL GAS (CNG)

SUBCHAPTER C. CLASSIFICATION, REGISTRATION, AND EXAMINATION

16 TAC §§13.61, 13.70, 13.76

The Railroad Commission of Texas (Commission) adopts amendments to §13.61, relating to Licenses, Related Fees, and Licensing Requirements; §13.70, relating to Examination Requirements and Renewals; and new §13.76, relating to Military Fee Exemption, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7327). The Commission adopts the amendments and new rule pursuant to Senate Bill (SB) 807, 84th Legislature (2015), which added §55.009 to Texas Occupations Code, Chapter 55, requiring a state agency which issues a license to waive the license application and examination fees for an applicant who is a military service member, military veteran, or military spouse, in certain situations.

The Commission adopts new §13.76 to address the requirements and procedure for the military fee exemption. The Commission adopts amendments to §13.61 and §13.70 to add a reference to new §13.76.

The Commission received no comments on the proposal.

The Commission adopts the amendments and new rule under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; and Texas Occupations Code, §55.009, which requires the Commission to waive the license application and examination fees for a military service member, military veteran, or military spouse in certain situations.

Texas Natural Resources Code, §116.012, and Texas Occupations Code, §55.009, are affected by the adopted amendments and new rule.

Statutory authority: Texas Natural Resources Code, §116.012, and Texas Occupations Code, §55.009.

Cross-reference to statute: Texas Natural Resources Code, §116.012, and Texas Occupations Code, §55.009.

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 14. REGULATIONS FOR LIQUEFIED NATURAL GAS (LNG)

SUBCHAPTER A. GENERAL APPLICABILITY AND REQUIREMENTS

16 TAC §§14.2013, 14.2014, 14.2019

The Railroad Commission of Texas (Commission) adopts amendments to §14.2013, relating to Licenses and Fees; new §14.2014, relating to Military Fee Exemption; and amendments to §14.2019, relating to Certification Requirements, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7329). The Commission adopts the amendments and new rule pursuant to Senate Bill (SB) 807, 84th Legislature (2015), which added §55.009 to Texas Occupations Code, Chapter 55, requiring a state agency which issues a license to waive the license application and examination fees for an applicant who is a military service member, military veteran, or military spouse, in certain situations.

The Commission adopts new §14.2014 to address the requirements and procedure for the military fee exemption. The Commission adopts amendments to §14.2013 and §14.2019 to add a reference to new §14.2014.

The Commission received no comments on the proposal.

The Commission adopts the amendments and new rule under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public; and Texas Occupations Code, §55.009, which requires the Commission to waive the license application and examination fees for a military service member, military veteran, or military spouse in certain situations.

Texas Natural Resources Code, §116.012, and Texas Occupations Code, §55.009, are affected by the adopted amendments and new rule.

Statutory authority: Texas Natural Resources Code, §116.012, and Texas Occupations Code, §55.009.

Cross-reference to statute: Texas Natural Resources Code, §116.012, and Texas Occupations Code, §55.009.

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 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF THE ACADEMIC CONTENT AREAS TESTING PROGRAM

DIVISION 4. PERFORMANCE STANDARDS

19 TAC §101.3041

The Texas Education Agency adopts an amendment to §101.3041, concerning student assessment. The amendment is adopted with changes to the proposed text as published in the October 16, 2015 issue of the *Texas Register* (40 TexReg 7180). The section addresses performance standards for the State of Texas Assessments of Academic Readiness (STAAR®). The adopted amendment establishes a revised performance standard progression for the STAAR® program. The adopted amendment also implements the first step of the new performance standard progression for the 2015-2016 school year. In addition, the adopted amendment implements performance standards for the STAAR® Alternate 2 Grades 3-8 and end-of-course (EOC) assessments.

REASONED JUSTIFICATION. In 2014, to give educators additional time to make the significant changes in instruction needed to raise the level of performance of all Texas students, the commissioner made four decisions related to STAAR® performance standards: 1) the phase-in 1 standard would be kept in place for the 2013-2014 and 2014-2015 school years; 2) the phase-in 2 standard would be redefined and implemented in the 2015-2016 school year; 3) a phase-in 3 standard would be created to allow for a more gradual increase of the phase-in standards; and 4) the final recommended standard would take effect in the 2021-2022 school year.

Given the STAAR® performance results for 2012 through 2015, the commissioner of education adopts the replacement of the current phase-in schedule with a standard progression approach from the 2015-2016 school year through the 2021-2022 school year, increasing performance standards annually. Intended to minimize any abrupt single-year increase in the required Level II performance standard, the standard progression approach still allows annual, consistent, incremental improvements toward the final recommended Level II performance standard in the 2021-2022 school year.

Similar to the original method used to develop the phase-in standards currently in effect, the performance standard progression is based on the standard deviations (SDs) of scale scores. For the 2015-2016 school year, step 1 of the performance progression modestly increases the performance standard (.1 SD) for all assessments except the English I and English II end-of-course assessments. The 2015-2016 performance standard is, therefore, set at .9 SD below the panel-recommended standard. In contrast, the phase-in 2 standard in the previous commissioner rule would increase to .7 SD below the panel recommended standard.

In each subsequent year after the 2015-2016 school year, the performance standard will increase by .15 SD, so the standard in the 2016-2017 school year would fall .75 SD below the panel recommendation, and so on, until the final recommended standard is implemented in the 2021-2022 school year.

The phase-in 1 standards for the English I and English II assessments were established originally at 0.5 SD below the panel-recommended standard. Similar to the other STAAR® assessments, for the 2015-2016 school year, step 1 of the standard progression is adjusted (.05 SD). The resulting 2015-2016 standard for these assessments will be .45 SD below the final rec-

ommended standard. In contrast, the phase-in 2 standard in the previous commissioner rule would have increased to 0.35 SD below the final recommended standard. In each subsequent year, the standard will increase by .075 SD until implementation of the final recommended standard in the 2021-2022 school year.

The adopted standard progression is calculated on scale scores, not raw scores. It is critical to note that raw score increments may vary from year to year because cut scores are defined by scale scores, not raw scores, and corresponding raw score cuts are influenced by the difficulty of test items selected for use in any given year.

The Level III standard, advanced academic performance, remains unchanged.

The adopted amendment reorganizes subsections (b) and (c) to adopt figures for the general and alternate assessments. The STAAR® general education assessment performance standards are reorganized as Figure: 19 TAC §101.3041(b)(1) for the Grades 3-8 assessments and Figure: 19 TAC §101.3041(c)(1) for the EOC assessments. The alternate Grades 3-8 and EOC assessments are formally implemented in Figure: 19 TAC §101.3041(b)(2) for Grades 3-8 and Figure: 19 TAC §101.3041(c)(2) for the EOC assessments.

As a result of House Bill 5, 83rd Texas Legislature, Regular Session, 2013, the Texas Education Agency redesigned the STAAR® Alternate assessment to meet the diverse needs of students with significant cognitive disabilities enrolled in Grades 3-8 and EOC subjects. To meet legislative requirements while maintaining an appropriate assessment for students with significant cognitive disabilities, a question-based approach to the STAAR® Alternate 2 was implemented. The assessment consists of 24 scripted questions. The test materials include a test administrator booklet with the scripted questions and guidelines for how the test will be administered and a student booklet that contains stimulus images and text needed for the student to select answers. This design allows for standardization of the assessment and eliminates the need for teachers to prepare tasks or materials. First administered in February 2015, STAAR Alternate 2 standards were established in spring 2015.

The STAAR® Alternate 2 assessment academic performance levels are: Level III: Accomplished Academic Performance; Level II: Satisfactory Academic Performance; and Level I: Developing Academic Performance.

Level III: Accomplished Academic Performance indicates a student performed at a level that was well above passing. A student was able to demonstrate a strong understanding of the knowledge and skills that are linked to the content being measured at this grade or course. Students within this category exhibit the ability to use higher-level thinking and more complex skills, which includes making inferences, comparisons, and solving multi-step problems. With support, these students have a high likelihood of showing progress in the next grade or course.

Level II: Satisfactory Academic Performance indicates a student performed at a level that was at or above passing. A student was able to demonstrate sufficient understanding of the knowledge and skills that are linked to the content being measured at this grade or course. Students within this category generally exhibit the ability to determine relationships, integrate multiple pieces of information, extend details, identify concepts, and match concepts that are similar. With continued support, these students have a reasonable likelihood of showing progress in the next grade or course.

Level I: Developing Academic Performance indicates a student performed at a level that was below passing. A student at this level was able to acknowledge concepts, but the student demonstrated a minimal or inconsistent understanding of the knowledge and skills that are linked to the content being measured at this grade or course. Even with continued support, these students are in need of significant intervention to show progress in the next grade or course.

For the STAAR® Alternate 2 performance standards, Figure: 19 TAC §101.3041(b)(2) for Grades 3-8 and Figure: 19 TAC §101.3041(c)(2) for the EOC assessments have been revised at adoption to give greater clarity by specifying each assessment's performance levels. The new figures include corrections to typographical errors for the Level III cut scores published at proposal.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began October 16, 2015, and ended November 16, 2015. Following is a summary of public comments received and corresponding agency responses regarding the proposed amendment to 19 TAC Chapter 101, Assessment, Subchapter CC, Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program, Division 4, Performance Standards, §101.3041, Performance Standards.

Comment: An educator from North East Independent School District (ISD) commented that the new standard approach provides a smoother transition to the final recommended standard. The educator also commented that it is critical that the new performance standards be consistent over the years as proposed. Various members of the public, educators from Cypress-Fairbanks ISD, Wichita Falls ISD, United ISD, Houston ISD, Round Rock ISD, Pine Tree ISD, and an educator from Lampasas ISD also expressed support for the new standard progression.

Agency Response: The agency agrees.

Comment: An educator from Tuloso-Midway ISD asked if the number of questions on a STAAR® assessment will increase with the new performance standards.

Agency Response: Although field-test questions will be removed, the number of base test questions on all STAAR® assessments used to determine a student's performance results will remain unchanged for the 2015-2016 administration. Implementation of House Bill 743, 84th Texas Legislature, 2015, may impact the number of base questions on the Grades 3-8 assessments beginning with the 2016-2017 school year.

Comment: The Texas School Alliance (TSA), educators from Cypress-Fairbanks ISD, Round Rock ISD, and United ISD commented that managing so many standards may be difficult. The educators from Cypress-Fairbanks ISD also requested results that span multiple years. TSA requested that the agency report student-specific information in multiple ways. For example, TSA requested that for the EOC assessment the agency report "percent met standard" so that districts can ascertain aggregate performance. TSA also requested that in each data file and summary report returned to districts, student-level performance in the prior, current, and future years also be reported.

Agency Response: The agency does intend to implement tools in its assessment data system to help districts manage the performance standards for students taking an EOC assessment. The agency notes that a student's EOC standard is permanently established when an answer document is first submitted for a student taking an EOC assessment. Each student's STAAR®

performance report, as well as agency reporting systems, will clearly indicate whether the student met expectations on the assessment. The assessment data system will also allow educators to examine multiple years of data. Reporting multiple standards will be considered for future reporting.

Comment: TSA requested that districts be given the opportunity to correct assessment records in a post-administration window of time before final reporting for the 2015-2016 school year.

Agency Response: The agency is mindful of the data integrity of student records in the STAAR® Assessment Management System and wants to ensure that duplicate student records do not exist. With the previous system, it was possible for the same student to be enrolled in multiple school districts without those districts knowing that the student was enrolled elsewhere. The new STAAR® Assessment Management System prevents this from occurring. The agency will continue to maintain the correction window for districts to resolve student test warnings and records changes.

Comment: An educator from Needville ISD disagreed with the proposed revised standards because of the 2012-2016 STAAR® passing rates. The educator requested that the proposal be withdrawn and the assessment and accountability system be repealed. A parent, an educator from United ISD, and several members of the public also requested that the state assessment be repealed. An educator from Wichita Falls ISD requested a decrease in the STAAR® testing rates in 2015-2016. An educator from United ISD requested that the phase-in 1 standard be kept in place for the 2015-2016 school year.

Agency Response: The agency disagrees. Given the STAAR® performance results for 2012 through 2015, the commissioner recommended the current phase-in schedule be replaced with a standard progression approach from 2015-2016 through 2021-2022, increasing performance standards annually. Intended to minimize any abrupt single-year increase in the required Level II performance standard, the standard progression approach will still allow annual, consistent, incremental improvements toward the final recommended Level II performance standard in 2021-2022. There is a need to adopt more rigorous performance standards in the 2015-2016 school year to motivate instruction and to continue to move toward the goal of adopting final recommended standards in 2021-2022.

State law requires public school students to be assessed in Grades 3-8 and high school. At the high school level, the Texas Education Code (TEC) requires that students must meet the state's assessment graduation standards in order to receive a Texas diploma. Though the agency oversees the development, administration, scoring, and reporting of the legislatively mandated tests and the implementation of the state's accountability system, the agency cannot make changes to the law's requirements. The requirements of the assessment and accountability program is determined by legislation enacted by the Texas Legislature. Federal law also requires that students be assessed annually in reading and mathematics in Grades 3-8; once in science in Grades 3-5; once in science in Grades 6-8; and once in reading/language arts, mathematics, and science in high school (the only assessments not required by federal law are Grades 4 and 7 writing, Grade 8 social studies, and the U.S. History EOC).

Comment: An educator from United ISD requested that STAAR® be given every semester, not annually.

Agency Response: The agency disagrees. State and federal laws require the annual assessment of students receiving instruction in the Texas essential knowledge and skills (TEKS) curriculum.

Comment: An educator from an education service center requested that the state examine the use of student progress rates instead of the new progression standard.

Agency Response: The agency disagrees. The agency has implemented the STAAR® progress measure to provide information about the academic improvement or growth a student has made from the previous year to the current year. However, the agency notes that TEC, §39.0241(a), does require the commissioner to determine the level of performance considered to be satisfactory on the assessment instruments.

Comment: An educator from United ISD asked the agency to consider that students have not been given appropriate practice on the STAAR® A assessment; therefore, it is an unreliable measure of student learning. Another educator from United ISD asked that STAAR® A be revised since the students who take STAAR® A may not comprehend what they are reading. An educator from Houston ISD requested that the STAAR® A assessments use a progress measure instead of the current performance levels, which would allow for an alternative cut score that can be phased in over several years for the affected students.

Agency Response: The agency disagrees. The STAAR® assessments, including STAAR® A, are specifically designed to measure individual student progress in relation to grade- and course-appropriate content that is directly tied to the state-mandated Kindergarten through Grade 12 curriculum, the TEKS. The tests are not separate from the curriculum; they assess only the content and skills that are required to be taught. This helps to ensure that students who have not mastered important skills and concepts in a particular content area or course can be identified and helped in those academic areas where they may need to strengthen their skills. The passing standards for STAAR® A are the same as any STAAR® test. STAAR® A provides embedded supports designed to help students with disabilities access the content being assessed. These embedded supports include visual aids, graphic organizers, clarifications of construct-irrelevant terms, and text-to-speech functionality. Each student taking STAAR® A is afforded additional allowable accommodations the student needs to comprehend the assessment.

Comment: An individual requested that new phase-in standards be delayed until the parents of English language learner (ELL) students become more involved in the students' education since ELLs may not be prepared for the more rigorous standards.

Agency Response: As discussed in previous rule action relating to English language learners (see *Texas Register,* December 16, 2011, at http://texashistory.unt.edu/ark:/67531/metapth201675/m1/61/), the agency does not agree that students must have a certain level of parental involvement or English language proficiency before taking an assessment as long as appropriate uses are made of the test scores. The agency acknowledges that it takes varying amounts of time to prepare ELLs for the state assessments given the needs of this population. However, the agency has been consistent in its belief that testing nearly all students, even students who cannot reasonably be expected to pass, does provide useful information and is appropriate as long as testing rules are consistent for all ELLs.

Comment: An educator from United ISD stated the any new curriculum standards such as revised mathematics should be implemented in phases. The educator also stated that the agency should consider appointing a panel of teachers to produce relevant and challenging materials for the STAAR® assessments.

Agency Response: Implementation of curriculum is outside the scope of this rule action. As for appointing educator committees for test development, Texas educators--Kindergarten through Grade 12 classroom teachers, higher education representatives, curriculum specialists, administrators, and education service center staff--play a vital role in all phases of the test development process. Thousands of Texas educators have served on one or more of the educator committees involved in all aspects of the development of the Texas assessment program. The STAAR® assessments are designed around the need to provide a more clearly articulated Kindergarten through Grade 12 education program that focuses on fewer skills and addresses those skills in a deeper manner. Thousands of Texas educators, who do understand the diverse issues and needs of Texas students, have served on one or more of the educator committees involved in the development of the test objectives, assessment guidelines, and test items. Their involvement enables the creation of high quality assessment instruments intended for use in Grades 3 through 12 that accurately reflect what Texas students are taught in the classroom.

Comment: An individual asked that, for fairness, the agency not raise the English language arts EOC passing scores (currently 3750) until the other courses (currently 3500) equal the English language arts scores.

Agency Response: The agency disagrees. Due to legislative requirements, new performance standards for STAAR® English I and English II were established in 2014. The evidence-based standard-setting approach was used to establish the performance standards for the redesigned STAAR® English assessments. This approach combines considerations regarding policy, the TEKS content standards, knowledge and experience of Texas educators, and information about how student performance on STAAR® aligns with performance on related tests and measures. This was the same approach used to set standards for all STAAR® assessments, including the other STAAR® EOC assessments. As part of the evidence-based approach, linking studies were conducted to establish empirical links between STAAR® assessments in adjacent grades. In this case, links were estimated between Grade 8 reading and English I, between English I and English II, and between English II and English III. The results of the linking studies were used to inform the alignment of performance standards across assessments.

Comment: Several educators from United ISD requested that the accountability index standards be lowered or remain the same as the spring 2015 index standards.

Agency Response: Accountability is outside the scope of this rule action.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §39.023(b-1), which required the agency to redevelop the STAAR® Alternate and set new performance standards for those assessments; TEC, §39.0241(a), which authorizes the commissioner to determine the level of performance considered to be satisfactory on the assessment instruments; and TEC, §39.025(a), which authorizes the commissioner to adopt rules requiring a student in the foundation high school program under TEC, §28.025, to be administered an end-of-course assessment instrument listed in TEC, §39.023(c), only for a course in which the student is enrolled and for which an end-of-course assessment instrument is administered. A student is required to achieve a scale score that indicates satisfactory performance, as determined by the commissioner under TEC, §39.0241(a), on each end-of-course assessment instrument administered to the student.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§39.023(b-1), 39.0241(a), and 39.025(a), as amended by House Bill 2349, 84th Texas Legislature, 2015.

§101.3041. Performance Standards.

(a) The commissioner of education shall determine the level of performance considered to be satisfactory on the assessment instruments. The figures in this section identify the performance standards established by the commissioner for state-developed assessments, as required by the Texas Education Code, Chapter 39, Subchapter B, for all grades, assessments, and subjects.

(b) The figures in this subsection identify the performance standards established by the commissioner for the State of Texas Assessments of Academic Readiness (STAAR®) general and alternate assessments at Grades 3-8.

(1) The figure in this paragraph identifies the STAAR® general education performance standards at Grades 3-8.
Figure: 19 TAC §101.3041(b)(1)

(2) The figure in this paragraph identifies the STAAR® Alternate 2 performance standards at Grades 3-8.
Figure: 19 TAC §101.3041(b)(2)

(c) For students first enrolled in Grade 9 or below in the 2011-2012 school year, the figures in this subsection identify the performance standards established by the commissioner for the STAAR® end-of-course (EOC) general and alternate assessments. The standard in place when a student first takes an EOC assessment is the standard that will be maintained on all EOC assessments throughout the student's high school career.

(1) The figure in this paragraph identifies the EOC general education assessment performance standards.
Figure: 19 TAC §101.3041(c)(1)

(2) The figure in this paragraph identifies the EOC alternate assessment performance standards.
Figure: 19 TAC §101.3041(c)(2)

(d) For students who were first enrolled in Grade 9 prior to the 2011-2012 school year or enrolled in Grade 10 or above in the 2011-2012 school year, the figure in this subsection identifies the performance standards established by the commissioner for the Texas Assessment of Knowledge and Skills exit level. The exit-level standard in place when a student enters Grade 10 is the standard that will be maintained throughout the student's high school career.
Figure: 19 TAC §101.3041(d) (No change.)

(e) The Texas Education Agency shall post annually to its website a 100-point score conversion table after the STAAR® assessment spring administrations. The 100-point scale is defined using percentiles, which represent the percentage of students across the state that took the assessment and received a scale score less than the scale score of interest. The percentile is based on the performance of students who took the paper, online, Braille, and L versions of the assessment during the spring administration of any given year.

(1) The following formula is used to calculate the percentile *p(S)* for a scale score *S*:*p(S)* = *x*/*N* x 100.

(2) In the formula in paragraph (1) of this subsection, *N* is the total number of students who took the tests, and *x* is the number of students with scale scores less than *S*. If the calculated percentile is not a whole number, then it is rounded down to the closest whole number.

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 153. SCHOOL DISTRICT PERSONNEL

SUBCHAPTER CC. COMMISSIONER'S RULES ON CREDITABLE YEARS OF SERVICE

19 TAC §153.1021, §153.1022

The Texas Education Agency adopts amendments to §153.1021 and §153.1022, concerning school district personnel. The amendment to §153.1021 is adopted with changes to the proposed text as published in the October 2, 2015 issue of the *Texas Register* (40 TexReg 6820). The amendment to §153.1022 is adopted without changes to the proposed text as published in the October 2, 2015 issue of the *Texas Register* (40 TexReg 6820) and will not be republished. Section 153.1021 establishes requirements for recognition of creditable years of service. Section 153.1022 addresses requirements relating to the minimum salary schedule for certain professional staff. The adopted amendments update the rules and reflect changes in statute made by Senate Bill (SB) 1309, 84th Texas Legislature, 2015. The adopted amendments also eliminate the need for clarification letters currently posted online, ensure outdated references are removed, and align commissioner's rules with current State Board for Educator Certification (SBEC) rules.

REASONED JUSTIFICATION

19 TAC §153.1021, Recognition of Creditable Years of Service

Effective February 1, 1998, the commissioner adopted 19 TAC §153.1021 as authorized by the Texas Education Code (TEC), §21.403, 75th Texas Legislature, 1997. The law required the commissioner to adopt rules for determining the experience for which certain professional staff are to be given credit in placement on the state minimum salary schedule. The rule provides appropriate definitions and explains required documents, necessary credentials, and the service record. The rule details the provisions for creditable years of service, including recognized employing entities for service credit.

The adopted amendment to 19 TAC §153.1021 updates and clarifies existing provisions, as follows.

Subsection (a) was modified in paragraph (8) to clarify the definition of current valid certificate, in paragraph (15) to update the list of regional accrediting agencies to include the reorganization of the former Northwest Association of Schools and Colleges into the Northwest Accreditation Commission and the Northwest Commission on Colleges and Universities, and in paragraph (19) to update the name of the Texas Youth Commission to the Texas Juvenile Justice Department.

In addition, language was added in paragraph (21) to give districts the ability to use digital signatures when preparing and sending service records. The change provides guidelines defining an official service record using a digital signature. This adds another option but does not replace a hand-signed or stamped form, which is currently in rule.

In response to public comment, subsection (a)(9) was modified at adoption to allow teachers with a valid Texas Standard classroom teaching certificate completing a teacher fellows graduate program through an accredited Texas university and employed at a Texas public school as a classroom teacher up to one year of service for salary increment purposes.

Subsection (d) was modified in paragraph (5) to allow for scanned service records for paperless record-keeping. Adding this option accommodates current technological advancements, especially for large districts.

Subsection (h) was modified in paragraph (1)(A) to add new clause (iv) to align with SBEC rule, 19 TAC §230.77, which states that ROTC instructors must have their permits reissued every year. Clause (iii) was modified and new clause (v) was added to align with SB 1309, 84th Texas Legislature, 2015, which establishes the ROTC classroom teaching certificate. These clauses clarify and simplify what prior ROTC experience may be used for salary increment purposes.

In response to public comment, subsection (h)(1)(A)(v) was modified at adoption to indicate that "at least" the minimum salary schedule must be paid so school districts are not required to pay only the minimum salary.

In addition, subsection (h) was modified in paragraph (1)(B)(ii) to clarify that charter school positions are not required to hold a certificate to earn steps on the salary schedule and in paragraph (16)(A) to end confusion of military experience that can be used for salary increment purposes. Also in subsection (h), modifications move text from clarification letters into rule. Language was added as new paragraph (12)(D) to ensure credit for salary increment purposes for hospital nursing experience at university-operated hospitals earned from 2000-2001 and after and as new paragraph (18)(C) to ensure credit for salary increment purposes for eligible Peace Corps nursing experience earned from 2000-2001 and after.

Subsection (k) was modified to clarify certification requirements for substitute teachers in Texas and other states for salary increment purposes.

Subsection (m) was modified to move text from a clarification letter into rule to clearly define that an educational aide must be certified for service to count for salary increment purposes.

19 TAC §153.1022, Minimum Salary Schedule for Certain Professional Staff

The commissioner is authorized to adopt a minimum monthly salary schedule for certain professionals, including classroom teachers, full-time librarians, full-time counselors, and full-time

nurses. The salary schedule is based on the employee's level of experience. In accordance with the TEC, §21.402, enacted by SB 4, 76th Texas Legislature, 1999, 19 TAC §153.1022 was adopted to be effective January 2, 2000. The rule establishes definitions of qualifying staff, details eligibility criteria for placement on the salary schedule, and explains the base pay. The rule also addresses base monthly salary, the determination of "FS," and monthly minimum salary rates.

The adopted amendment to 19 TAC §153.1022 updates and clarifies existing provisions, as follows.

Subsections (b) and (d) were modified to delete references to the 2011-2012 and 2012-2013 school years to make the provision apply generally to all years going forward.

Subsection (d) was also be modified to replace the figure currently adopted in rule for the minimum monthly salary rates with new Figure: 19 TAC §153.1022(d)(1) for the 2014-2015 school year and new Figure: 19 TAC §153.1022(d)(2) for the 2015-2016 and 2016-2017 school years.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began October 2, 2015, and ended November 2, 2015. Following is a summary of public comments received and corresponding agency responses regarding the proposed amendments to 19 TAC Chapter 153, School District Personnel, Subchapter CC, Commissioner's Rules on Creditable Years of Service

Comment. The assistant director of data services from the Texas Association of School Boards commented that the proposed language appears to require the state minimum salary schedule to trump military minimum instructor pay, which is incorrect and may cause districts to be out of compliance with military regulations. The commenter stated that if the language was changed to match subsection (h)(1)(A)(i)--"must be paid at least the minimum salary"--the regulation would be less confusing to district staff.

Agency Response. The agency agrees. Subsection (h)(1)(A)(v) has been modified at adoption to indicate that "at least" the minimum salary schedule must be paid so school districts are not required to pay only the minimum salary.

Comment. The certification specialist in human resources from Belton Independent School District commented that digital and scanned service records would require that they would have to provide multiple service records. The commenter also requested clarification about the difference between a university-operated versus a nursing university-operated hospital.

Agency Response. The agency disagrees and maintains language as published as proposed. The rule does not require that districts use digital signatures or scanned service records. This change just allows another option. The rule only refers to university-operated hospitals, and there has never been a reference to a nursing university-operated hospital.

Comment. The co-director of the teacher fellows program at Texas State University commented that teacher fellows should be an exception to subsection (a)(9) that does not allow instructors on a fellowship to receive credit for salary increment purposes. The commenter stated, "because Teacher Fellows [at Texas State University] are the teacher-of-record during their first year and perform all the duties of a full-time teacher for a full contract year, it seems justifiable that they receive a year of creditable service if they transfer to a new school district."

Agency Response. The agency agrees. Subsection (a)(9) has been modified at adoption to include, "Teachers with a valid Texas Standard classroom teaching certificate completing a teacher fellows graduate program through an accredited Texas university and employed at a Texas public school as a classroom teacher beginning July 1, 2015, may be eligible for up to one year of service for salary increment purposes provided the minimum employment requirements specified in subsection (f) of this section are met."

Comment. The director of professional development and advocacy for the Texas Classroom Teachers Association objected to adding the word "certified" to be an eligibility requirement for educational aides earning up to two years of service for salary increment purposes if they subsequently become a teacher. The commenter stated that adding the word "certified" would disallow previous service, limit the number of educational aides going forward who could not count their years of service because certification was not enforced by the agency, and that it would undermine the intent of the original rule as an incentive for aides to become teachers. The commenter also stated that this change would require aides to complete continuing professional education (CPE) hours.

Agency Response. The agency disagrees. Educational aides are required to be certified under current law and rule, and this rule is consistent with past interpretation of the existing rule and practice. This rule does not change requirements for renewal of educational aide certificates, which currently do not require CPE hours. Requiring certification does not impact an aide's motivation to become a teacher; it only supports the requirement that educators must be appropriately certified in the state of Texas. In reference to the original rule that created the incentive, it states the purpose is to encourage "qualified paraprofessional personnel." Certification is a requirement to be considered a qualified paraprofessional.

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §21.402, which requires school districts to pay certain personnel at a minimum monthly salary based on experience and other factors as determined by commissioner rule. TEC, §21.403, requires the commissioner to adopt rules determining the experience for which personnel subject to the minimum salary schedule shall be given credit. SB 1309 added TEC, §21.0487, requiring the SBEC to establish a Junior Reserve Officer Training Corps (JROTC) teaching certificate. The statute prescribes certain standards for the JROTC certification. TEC, §12.120(a-1), allows for charter schools to hire uncertified educators. Human Resources Code, §201.001, reflects the updated name for the Texas Juvenile Justice Department.

CROSS REFERENCE TO STATUTE. The amendments implement the TEC, §§21.402; 21.403; 21.0487, as added by SB 1309, 84th Texas Legislature, 2015; and 12.120(a-1); and Texas Human Resources Code, §201.001.

§153.1021. Recognition of Creditable Years of Service.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Accredited institution--A public or private elementary, secondary, or post-secondary institution whose education program has been evaluated and deemed accredited by a state department of education or recognized regional accrediting agency.

(2) Charter school--A charter school that has been authorized to operate under the Texas Education Code (TEC), Chapter 12, Subchapter D or E.

(3) Assignment--Refers to the actual duties a person has with a school district or other educational entity.

(4) Authorized leave--Leave granted under the state's former minimum sick leave program, leave granted under the state's current minimum personal leave program (which includes physical assault leave), or any leave granted under a local leave policy for which the employee is paid as if on regular duty.

(5) Certificate--A document issued by the State Board for Educator Certification (SBEC) authorizing the holder to teach in the public elementary and secondary schools of Texas.

(6) Certified--Status of a person who holds a valid Texas teaching certificate.

(7) Contractual year--The employment period between July 1 and the following June 30.

(8) Current valid certificate--A certificate that is or was valid at a given time, including the stipulation that after June 30, 1986, a Texas certificate is valid only if the certified person has successfully passed any certification requirement that was mandated by either the State Board of Education or the SBEC.

(9) Faculty status--Employment by a college or university as a member of the professional administrative or instructional staff, not as a graduate assistant, an assistant instructor, or an instructor on a fellowship. Teachers with a valid Texas Standard classroom teaching certificate completing a teacher fellows graduate program through an accredited Texas university and employed at a Texas public school as a classroom teacher beginning July 1, 2015, may be eligible for up to one year of service for salary increment purposes provided the minimum employment requirements specified in subsection (f) of this section are met.

(10) Full-time employment--Employment for 100% of an institution's normal work schedule.

(11) Full-time equivalency--The amount of time required of a staff member to perform a less than full-time assignment divided by the amount of time required in performing a corresponding full-time assignment. Full-time equivalency of assignment usually is expressed as a decimal fraction to the nearest tenth.

(12) Minimum salary--The minimum salary a classroom teacher, full-time librarian, full-time counselor, or full-time school nurse must be paid as prescribed in TEC, Chapter 21.

(13) Part-time employment--Employment for less than 100% of an institution's normal work schedule.

(14) Professional personnel--Teachers, full-time librarians, full-time counselors, full-time school nurses, other employees who are required to hold a certificate issued under TEC, Chapter 21, Subchapter B, and any other personnel reported by a school district to the Public Education Information Management System with a "professional" role-id.

(15) Regional accrediting agency--The recognized regional accrediting agencies are:

(A) Southern Association of Colleges and Schools;

(B) Middle States Association of Colleges and Schools;

(C) North Central Association of Colleges and Schools;

(D) New England Association of Schools and Colleges;

(E) Western Association of Schools and Colleges;

(F) Northwest Accreditation Commission;

(G) Northwest Commission on Colleges and Universities;

(H) Commission on International and Trans-regional Accreditation;

(I) International Baccalaureate Organization;

(J) European Council of International Schools/Council of International Schools; and

(K) National Council for Private School Accreditation.

(16) Salary increments--Increases in salary granted for teaching or work experience.

(17) School nurse--An educator employed to provide full-time nursing and health care services and who meets all the requirements to practice as a registered nurse (RN) pursuant to the Nursing Practice Act and the rules and regulations relating to professional nurse education, licensure, and practice, and who has been issued a license to practice professional nursing in Texas.

(18) Service--A term of employment measured in school years in an entity in which the employment is recognized for salary increment purposes.

(19) State school--A school that is funded by legislative action in the appropriations act. These schools include the Texas School for the Blind, the Texas School for the Deaf, and schools under the jurisdiction of the Texas Department of State Health Services (formerly the Texas Department of Mental Health and Mental Retardation) and the Juvenile Justice Department (formerly known as the Texas Youth Commission).

(20) Substitute teacher--A certified teacher who works on call, does not have a full-time assignment, and provides instruction.

(21) Teacher service record--The official document used to record years of service and days used and accumulated under the state's former minimum sick leave program or the state's current personal leave program. A service record with a digital signature is only valid for the intended recipient as recorded on the service record. A digital version that includes information from previous employing districts is acceptable if the most recent school district is the designated recipient of the information from the previous districts. The digital service record will not be official if the recipient is the educator; however, upon request the district will provide a copy to the educator in accordance with the TEC, §21.4031(b).

(b) Required documentation. The following records on professional personnel must be readily available for review.

(1) credentials (certificate or license);

(2) service record(s) and any required attachments;

(3) contract;

(4) teaching schedule or other assignment record; and

(5) absence from duty reports.

(c) Credentials for professional personnel. The credentials for professional personnel are as follows.

(1) A current valid Texas certificate, a special assignment permit, a nonrenewable permit, a non-certified instructor's permit, an emergency teaching permit, or the appropriate licensure from the State of Texas.

(2) For special education related service teachers, the credential must be appropriate licensure from the State of Texas.

(3) For those special education related service personnel who do not require Texas certification or licensure, proper credentials as described in §89.1131 of this title (relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel) are required.

(d) Teacher service record. The basic document in support of the number of years of professional service claimed for salary increment purposes and both the state's sick and personal leave program data for all personnel is the teacher service record (form FIN-115) or a similar form containing the same information. It is the responsibility of the issuing school district or charter school to ensure that service records are true and correct and that all service recorded on the service record was actually performed.

(1) The service record must be validated by a person designated by the school district or charter school to sign service records.

(2) Supporting documents are required for service in out-of-state private schools, foreign public and private institutions, the military, and colleges and universities. The type of supporting documentation for each particular entity is prescribed by subsection (h) of this section.

(3) If a person is employed by more than one school district or charter school during the same school year, a service record from each employing district or charter school is required.

(4) For personnel employed in a year-round school system, the actual dates of employment during that school's calendar must be indicated on the service record. The dates may not necessarily conform to the contractual year as defined by subsection (a) of this section.

(5) The service record shall be kept on file at the school district or charter school. When employment with the district or charter school is terminated, the original service record, signed by the employee shall be given to the employee upon request or sent to the next employing school district or charter school. The local school district or charter school must maintain a legible copy for audit purposes. A scanned version of the original service record may be considered official if sent directly from one employing district to another employing district.

(6) Cooperative personnel employed by a fiscal agent/manager and itinerant personnel of a cooperative shall be considered to be employees of the fiscal agent/manager and the service record shall be the fiscal agent/manager's responsibility. Personnel employed by a member of a cooperative and assigned to the member are employees of the member and the service record shall be the member's responsibility.

(7) Work experience claimed by career and technology education personnel for salary increment purposes as prescribed by subsection (i) of this section must be recorded on a service record.

(8) State sick leave balances, days earned, and days used by personnel under the former state's minimum sick leave program and the state's current personal leave program must be recorded on the service record or another similar form containing the same information. State sick leave and state personal leave accumulated in Texas public elementary and secondary schools are transferable among these schools. State personal leave accrued by an employee of a Texas regional education service center, not to exceed five days per each year of employment, is transferable to a Texas public elementary and secondary school. State sick leave and state personal leave accrued by an employee of Harris County Department of Education and Dallas County Schools are transferable to Texas public elementary and secondary schools in accordance with the TEC, §22.003(a). Local leave accrued under the policy of any entity recognized for creditable service under subsection (g) of this section may be transferred to a Texas public elementary or secondary school at the discretion of the employing school district. The service record shall separately state the number of accumulated state days for which the employee is paid, if any, upon separation from the employing district.

(9) State days used to purchase additional years of service from the Teacher Retirement System of Texas (TRS) for retirement purposes must be deducted from the balance reflected on the service record.

(10) The issuing school district or charter school must submit the service record to the Texas Education Agency upon request.

(e) General provisions for years of creditable service. All service claimed for salary increment purposes must meet the requirements in subsections (f)-(h) of this section. The service record and any other required supporting documents must meet the requirements for such records and documentation in this section. All service shall be based on the contractual year (July 1-June 30). No more than one year of experience may be acquired in any one contractual year.

(f) Minimum requirements. The table in this subsection indicates the minimum number of days required to earn and receive credit for a year of experience.
Figure: 19 TAC §153.1021(f) (No change.)

(1) For service performed through the 1989-1990 school year, minimum days at less than 100% or at full-time equivalency are applicable only to service in Texas public schools, Texas education service centers, and, beginning in 1978-1979, Texas public colleges and universities.

(2) Beginning with service performed during the 1990-1991 school year or any year thereafter, employment at less than 100% of the day is recognized in all entities where full-time employment is recognized, provided that documentation is presented to the employing district which verifies that the employment was for not less than three and one-half hours each day.

(3) The 90 days required at 100% of the day for years prior to 1972-1973 may be equivalent to four and one-half months, a full semester, or three six-weeks. Where the school year was less than 180 days for any year prior to 1972-1973, a minimum of 175 days at 50-99% of the day will be accepted, provided that the 175 days constituted two full semesters or six six-weeks.

(4) For experience from the 1978-1979 through the 1987-1988 school years, full-time equivalent days equal the total number of days employed at 100% of the day plus days employed at 50-99% of the day divided by two.

(5) Beginning with the 1988-1989 school year, full-time equivalent days equal the total number of days employed multiplied by the percent of day actually worked.

(6) Beginning with the 1998-1999 school year, the 90 days required at 100% of the day may be equivalent to four and one-half months or a full semester. The 180 days required at 50-99% of the day may be equivalent to 90 full-time equivalent days (percent of day employed multiplied by number of days employed).

(7) Extended day migrant program employment shall be calculated in accordance with this section and the resulting equivalent must meet the same minimum requirements for professionals for the year in question.

(A) For service prior to the 1970-1971 school year, the days employed in the migrant program shall be multiplied by a factor of 1.37.

(B) For service during the 1970-1971 through the 1975-1976 school years, the days employed in the migrant program shall be multiplied by a factor of 1.31.

(g) Entities recognized for years of service. Service in any of the entities listed in this subsection shall be recognized for professional personnel. The minimum employment requirements in subsection (f) of this section must be met. Requirements concerning service in each type of entity in subsection (h) of this section must also be met. Professional service in the following entities is creditable:

(1) Texas public elementary and secondary schools, including charter schools;

(2) State regional education service centers;

(3) State departments of education;

(4) Texas Department of Corrections--Windham Schools;

(5) Public elementary and secondary schools in all other states in the United States or within the boundaries of any of its territorial possessions;

(6) Overseas schools operated by the U.S. Government;

(7) Texas public or private colleges or universities;

(8) Texas private elementary and secondary schools;

(9) Texas non-public special education contract schools;

(10) Texas Department of State Health Services (formerly the Texas Department of Mental Health and Mental Retardation)--state hospitals and state schools;

(11) Texas veterans' vocational schools;

(12) Public or private colleges or universities and private elementary and secondary schools in all other states in the United States or within the boundaries of any of its territorial possessions;

(13) Foreign public or private colleges or universities, or elementary and secondary schools;

(14) U.S. Department of Interior--Bureau of Indian Affairs;

(15) U.S. service academies;

(16) U.S. military service;

(17) Job Corps; and

(18) Peace Corps (in a professional capacity only).

(h) Requirements. Requirements for entities recognized for professional personnel are as follows:

(1) Texas public elementary and secondary schools, including charter schools.

(A) Requirements specific to Texas public elementary and secondary schools.

(i) All professional personnel must be certified by the State of Texas, must hold the proper state or national licensure as required by the position held, or must have the educational requirements for the job assigned. Regardless of the funding source, classroom teachers, full-time librarians, full-time counselors, and full-time school nurses must be paid at least the minimum salary specified in the Texas State Public Education Compensation Plan.

(ii) Professional personnel placed on developmental leaves of absence must be paid at least one-half of their state minimum salary by the school district to receive service credit for increment purposes.

(iii) Instructors in Reserve Officer Training Corps (ROTC) programs conducted by local school districts must be certified or hold an emergency teaching permit. An emergency teaching permit need not be renewed as long as the person continues in the ROTC assignment.

(iv) Beginning with the 2014-2015 school year, an emergency teaching permit must be reissued annually in accordance with §230.77 of this title (relating to Specific Requirements for Initial Emergency Permits).

(v) Beginning July 1, 2015, ROTC instructors who hold the ROTC standard Texas classroom teaching certificate must be paid at least according to the minimum salary schedule. Prior experience serving as an ROTC instructor on an emergency permit shall be recognized for salary increment purposes provided the minimum employment requirements specified in subsection (f) of this section are met for ROTC instructors who obtain a standard Texas classroom teaching certificate.

(B) Requirements specific to charter schools.

(i) Employment must have been in a professional capacity as defined by subsection (a) of this section.

(ii) For salary increment purposes, educators are not required to be certified unless they are serving in special education or bilingual education or are required to be certified in the charter application.

(2) State regional education service centers.

(A) Personnel employed in cooperatives for which the education service center is acting as fiscal agency must meet the same requirements as personnel employed in Texas public elementary and secondary schools.

(B) All other personnel must meet the same requirements as personnel employed in state departments of education.

(3) State departments of education. Employment must have been in a professional capacity. For Texas department of education employment, professional positions are defined as personnel employed in positions starting in state pay grade classification B4/A12 and above.

(4) Texas Department of Corrections--Windham schools. Requirements in this subsection shall apply.

(5) Public elementary and secondary schools in all other states of the United States or within the boundaries of any of its territorial possessions. Employment prior to 1990-1991 must have been on a full-time basis.

(6) Overseas schools operated by the U.S. government. Schools operated by the United States Government for military dependents and dependents of personnel assigned to an embassy, consulate, etc., are treated as public schools in other states of the U.S. and policies pertaining to public schools in other states apply.

(7) Texas public or private colleges or universities.

(A) For private colleges and universities, accreditation by the Southern Association of Colleges and Schools is required.

(B) Officer Training Corps programs conducted by accredited colleges or universities must have been employed full-time on

a faculty status level. Beginning in 1998-1999, service as an instructor in an agricultural extension service operated by an accredited college or university may be recognized for salary increment purposes as long as the person held a valid Texas teaching certificate at the time the service was rendered.

(C) All college or university experience must be recorded on the teacher service record. A supporting letter or form must be attached to the teacher service record verifying that either the full-time or part-time employment was at faculty status or its equivalent and that the schedule of work and the pay constituted that of other similar faculty employees. It is the responsibility of the employing school district to secure verification of college or university experience.

(8) Texas private elementary and secondary schools.

(A) For experience prior to the 1986-1987 school year, accreditation by the Texas Education Agency or the Southern Association of Colleges and Schools is required.

(B) For experience in the 1986-1987, 1987-1988, and 1988-1989 school years, service shall be acceptable if the school was accredited by the Texas Education Agency, or a recognized regional accrediting agency.

(C) For experience in the 1989-1990 school year and thereafter, service shall be acceptable if the school was accredited by the Texas Private School Accreditation Commission.

(D) During the 1986-1987, 1987-1988, and 1988-1989 school years, private schools accredited by the Texas Education Agency, a recognized regional accrediting agency, or an association recognized by the commissioner of education will be listed in the Texas School Directory.

(E) Beginning with the 1989-1990 school year and thereafter, private schools accredited by the Texas Private School Accreditation Commission will be listed in the Texas School Directory.

(F) Beginning with the 2004-2005 school year and thereafter, private schools accredited by the Texas Private School Accreditation Commission will be listed on the Texas Education Agency website.

(9) Non-public special education contract schools.

(A) Approval from the Texas Education Agency to provide special education services during the year service was rendered is required. A list of approved schools is maintained by the Texas Education Agency and posted on the Texas Education Agency website.

(B) The person must have been certified in an area of special education.

(10) Texas Department of State Health Services (formerly the Texas Department of Mental Health and Mental Retardation) state hospitals and state schools.

(A) The assignment must have been in an educational program operated in conjunction with a public school program or in a non-educational professional capacity.

(B) Persons employed in an educational program must have held a valid Texas teaching certificate and must have been paid at least the state minimum salary of a teacher in a Texas public school.

(11) Texas veteran's vocational school.

(A) The assignment must have been as an instructor or coordinator.

(B) Service during the period of July 1, 1946, through June 30, 1955, must have been at a school under the jurisdiction of the Texas Education Agency (this service can be verified by the agency).

(C) Service after June 30, 1955, must have been at a veteran's vocational school operated by a Texas county board of school trustees under the jurisdiction of the Veterans Administration.

(12) Public or private colleges and universities, and private elementary and secondary schools in all other states in the United States or within the boundaries of any of its territorial possessions.

(A) Employment must have been, and in the case of colleges and universities, must be verified in the same manner as for Texas colleges or universities.

(B) Accreditation by a recognized state or regional accrediting agency listed in subsection (a)(15) of this section is required. In states or territories that have no provisions for accrediting, licensing, or approving private elementary or secondary schools, service shall be acceptable provided the person held, while employed, a valid teaching certificate from the state in which the school is located or a valid Texas teaching certificate.

(C) It is the responsibility of the employing school district or charter school to have evidence on file of the accreditation status of private schools in other states.

(D) Hospital nursing experience shall be acceptable provided the person held a registered nurse position with a recognized accredited university-operated hospital listed in this subsection. All eligible prior-year service in this area can be claimed for placement beginning on the 2000-2001 minimum salary schedule.

(13) Foreign public or private elementary and secondary schools, colleges, and universities.

(A) Employment in colleges or universities must be verified in the same manner as for Texas colleges or universities.

(B) For foreign public schools, colleges, and universities, accreditation by a recognized agency of the foreign country or by a recognized accrediting agency in the United States is required.

(C) For foreign private schools, colleges, and universities, accreditation must be by a recognized regional accrediting agency listed in subsection (a)(15) of this section.

(D) The accreditation status must be verified in the same manner as for public or private schools in the United States.

(14) United States Department of the Interior--Bureau of Indian Affairs. Service must have been full-time.

(15) United States service academies.

(A) Employment must have been at a faculty status level and must be verified in the same manner as other college or university service.

(B) The service academies are as follows:

(i) Air Force Academy, Colorado Springs, Colorado;

(ii) Coast Guard Academy, New London, Connecticut;

(iii) Military Academy, West Point, New York;

(iv) Naval Academy, Annapolis, Maryland; and

(v) Merchant Marine Academy, Kings Point, New York.

(16) United States military service. Service with the military forces of the United States of America may be counted for salary increment purposes if the following conditions are met.

(A) The person was a professional employee of any entity recognized for creditable service for salary increment purposes within twelve months prior to entry into active duty.

(B) Form DD-214 or other official discharge papers must be filed with the teacher service record showing:

(i) that military service was in the capacity of an enlisted man or woman or commissioned officer;

(ii) that release or separation from active duty was under honorable conditions; and

(iii) dates of entry and release from active duty.

(C) The person claiming military service was on active duty during the periods September 1, 1940, through August 31, 1947, or September 1, 1950, through August 31, 1954, or for other periods if:

(i) the military service was a result of involuntary induction into active duty; or

(ii) the military service was a result of voluntary entry into active duty for the first time for the individual, and such initial period of voluntary military service claimed as years of service for teacher salary increments does not exceed four years.

(D) Beginning with the 1983-1984 school year, for purposes of determining the total years of military experience creditable for increment purposes, a year shall be considered to begin on July 1 and end June 30. During this period, four and one-half months of service must be acquired for an individual to be entitled to one year of experience. Only one year of experience may be earned during any 12-month period. Prior to the 1983-1984 school year, credit for military service was calculated based on the 12-month period from September 1-August 31. Credit granted on that basis shall continue to be effective.

(E) The requirement in subparagraph (A) of this paragraph must be met before any credit is given.

(17) Job Corps. The person must have held a valid teaching certificate or appropriate license that would qualify for service credit during the period of employment.

(18) Peace Corps.

(A) Employment must have been with a school system (Grades K-12) in a foreign country.

(B) The person must have held a valid teaching certificate or appropriate license that would qualify for service credit from any state in the United States during the period of employment.

(C) Peace Corps nursing experience shall be acceptable and recognized in the same manner as teaching experience in the Peace Corps, provided the nursing service in the Peace Corps was as a registered nurse. Requirements listed in this subsection and subsection (a)(17) of this section must also be met. All eligible prior-year service in this area can be claimed for placement beginning on the 2000-2001 minimum salary schedule.

(i) Credit for career and technology teachers. In accordance with TEC, §21.403, effective with the 1982-1983 school year, certified career and technology education teachers employed for at least 50% of the time in an approved career and technology position may count up to two years of work experience for salary increment purposes if the work experience was required for career and technology certification.

(1) For purposes of this section, an emergency teaching permit shall be the equivalent of a teaching certificate.

(2) Once credit for work experience has been granted, the credit shall be continued regardless of the position held. For personnel granted credit under this section whose employment is split between career and technology and non-career and technology positions, the years granted shall apply to both the career and technology and the non-career and technology positions.

(j) Adult basic education program credit. A person teaching adult basic education is eligible for creditable service if the program was operated by a public school and the person held a valid teaching certificate.

(k) Substitute teachers. Beginning with the 1998-1999 school year, a certified substitute teacher, as defined in subsection (a) of this section, employed in an entity recognized for years of service as prescribed by subsection (g) of this section is eligible for creditable service, provided that the educator held a valid Texas teaching certificate or a valid teaching certificate from the state where the school is located at the time the service was earned. All eligible prior-year service in this area can be claimed for placement on the 1998-1999 minimum salary schedule. This also applies to out-of-state substitute teaching experience. It does not apply to out-of-country substitute experience.

(l) Salary schedule. The commissioner of education shall publish annually the state minimum salary schedule.

(m) Certified teacher aides. Beginning with the 2004-2005 contractual year, a certified teacher aide who subsequently attains initial classroom teacher certification may count up to two years of full-time equivalency of direct student instruction for salary increment purposes. Such experience must be verified on the teacher service record form (FIN-115) or a similar form containing the same information. A teacher aide who received a teaching certificate or was placed under a permit prior to the 2004-2005 contractual year will not qualify for the additional years of service on the minimum salary schedule under 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.

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION
SUBCHAPTER C. ASSESSMENT OF MAINTENANCE TAXES AND FEES

28 TAC §1.414

The Texas Department of Insurance adopts amendments to 28 Texas Administrative Code §1.414, concerning the 2016 assessment of maintenance taxes and fees imposed by the Texas Insurance Code. The amendments are adopted without changes to the proposed text published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 7957).

Under Government Code §2001.033(a)(1), the department's reasoned justification for these amendments is set out in this order, which includes the preamble and rules.

REASONED JUSTIFICATION. The amendments are necessary to adjust the rates of assessment for maintenance taxes and fees for 2016 on the basis of gross premium receipts for calendar year 2015 using the methodology described below.

Section 1.414 includes rates of assessment for maintenance taxes and fees for 2016 to be applied to life, accident, and health insurance; motor vehicle insurance; casualty insurance and fidelity, guaranty, and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; workers' compensation self-insured groups; title insurance; health maintenance organizations (HMOs); third party administrators; nonprofit legal services corporations issuing prepaid legal services contracts; and workers' compensation certified self-insurers.

In general, the department's 2016 revenue need (the amount that must be funded by maintenance taxes or fees, examination overhead assessments, the department's self-directed budget account as established under Insurance Code §401.252, and premium finance examination assessments) is determined by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2015.

To determine total cost need, the department combined costs from: (i) appropriations set out in Chapter 1281 (HB 1), Acts of the 84th Legislature, Regular Session, 2015 (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by Insurance Code Chapter 401, Subchapters D and F, as approved by the commissioner of insurance for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses and administrative support costs; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of the 2016 fiscal year until the next assessment collection period in 2017. From these combined costs, the department subtracted costs allocated to the Division of Workers' Compensation (DWC) and the workers' compensation research and evaluation group.

The department determined how to allocate the remaining cost need attributed to each funding source using the following method:

For each section within the department that provides services directly to the public or the insurance industry, the department allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the self-directed budget account, the examination assessment, or another funding source. The department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculated the percentage for each funding source by dividing the total directly allocated to each funding source by the total direct cost. The department used this percentage to allocate administrative support costs to each funding source. Administrative support costs include services provided by human resources, accounting, budget, the commissioner's administration, and information technology. The department calculated the total direct costs and administrative support costs for each funding source.

The General Appropriations Act includes appropriations to state agencies other than the department that must be funded by Account No. 0036 and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees. The department adds these costs to the sum of the direct costs and the administrative support costs for the appropriate funding source, when possible. For instance, the department allocates an appropriation to the Texas Department of Transportation for the crash information records system to the motor vehicle maintenance tax. The department includes costs for other agencies that cannot be directly allocated to a funding source to the administrative support costs. For instance, the department includes an appropriation to the Texas Facilities Commission for building support costs in administrative support costs.

The department calculates the total revenue need after completing the allocation of costs to each funding source. To complete the calculation of revenue need, the department removes costs, revenues received, and the fund balance related to the self-directed budget account. Based on remaining balances, the department reduces the total cost need by subtracting the estimated ending fund balance for fiscal year 2015 (August 31, 2015,) and estimated fee revenue collections for fiscal year 2016. The resulting balance is the estimated revenue need that must be supported during the 2016 fiscal year by the following funding sources: the maintenance taxes or fees, exam overhead assessments, and premium finance exam assessments.

The department determines the revenue need for each maintenance tax or fee line by dividing the total cost need for each maintenance tax line by the total of the revenue needs for all maintenance taxes. The department multiplies the calculated percentage for each line by the total revenue need for maintenance taxes. The resulting amount is the revenue need for each maintenance tax line. The department adjusts the revenue need by subtracting the estimated amount of fee and reimbursement revenue collected for each maintenance tax or fee line from the total of the revenue need for each maintenance tax or fee line. The department further adjusts the resulting revenue need as described in the following paragraphs.

The cost allocated to the life, accident, and health maintenance tax exceeds the amount of revenue that can be collected at the maximum rate set by statute. The department allocates the difference between the amount estimated to be collected at the maximum rate and the costs allocated to the life, accident, and health maintenance tax to the other maintenance tax or fee lines. The department allocates the life, accident, and health shortfall based on each of the remaining maintenance tax or fee lines' proportionate share of the total costs for maintenance taxes or

fees. The department uses the adjusted revenue need as the basis for calculating the maintenance tax rates.

For each line of insurance, the department divides the adjusted revenue need by the estimated premium volume or assessment base to determine the rate of assessment for each maintenance tax or fee.

The following paragraphs provide an explanation of the methodology to develop the proposed rates for DWC and the Office of Injured Employee Counsel (OIEC).

To determine the revenue need, the department considered these factors applicable to costs for DWC and OIEC: (i) the appropriations in the General Appropriations Act for fiscal year 2016 from Account No. 0036; (ii) estimated other costs statutorily required to be paid from Account No. 0036, such as fringe benefits and statewide allocated costs; and (iii) an estimated cash amount to finance Account No. 0036 costs from the end of the 2016 fiscal year until the next assessment collection period in 2017. The department adds these three factors to determine the total revenue need.

The department reduces the total revenue need by subtracting the estimated fund balance at August 31, 2015, and the DWC fee and reimbursement revenue estimated to be collected and deposited to Account No. 0036 in fiscal year 2016. The resulting balance is the estimated revenue need from maintenance taxes. The department calculated the maintenance tax rate by dividing the estimated revenue need by the combined estimated workers' compensation premium volume and the certified self-insurers' liabilities plus the amount of expense incurred for administration of self-insurance.

The following paragraphs explain the methodology the department used to develop the proposed rates for the workers' compensation research and evaluation group.

To determine the revenue need, the department considered the following factors applicable to the workers' compensation and research and evaluation group: (i) the appropriations in the General Appropriations Act for fiscal year 2016 from Account No. 0036 and from General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) estimated other costs statutorily required to be paid from this funding source, such as fringe benefits and statewide allocated costs; and (iii) an estimated cash amount to finance costs from this funding source from the end of the 2016 fiscal year until the next assessment collection period in 2017. The department adds these three amounts to determine the total revenue need.

The department reduced the total revenue need by subtracting the estimated fund balance at August 31, 2015. The resulting balance is the estimated revenue need from maintenance taxes. The department calculated the maintenance tax rate by dividing the estimated revenue need by the estimated assessment base.

Insurance Code §964.068 provides that a captive insurance company is subject to maintenance tax under Insurance Code Title 3, Subtitle C, on the correctly reported gross premiums from writing insurance on risks located in Texas as applicable to the individual lines of business written. The rates adopted in this rule will be applied to captive insurance companies based on the individual lines of business written, unless the commissioner postpones or waives the tax for a period not to exceed two years for any foreign or alien captive insurance company redomesticating to Texas under Insurance Code §964.071(c).

The following paragraphs provide a brief summary and analysis of the reasons for the adopted amendments.

The amendment to the section heading reflects the year for which the assessment of maintenance taxes and fees is applicable. The amendments in subsections (a) - (f), and (h) reflect the appropriate year for accurate application of the section.

Amendments in subsections (a)(1) - (9), (c)(1) - (3), (d), (e), and (f) update rates to reflect the methodology the department developed for 2016.

Finally, the department adopts amendments that are nonsubstantive in nature to conform with the department's writing style guides.

Subsection (a) establishes the 2015 calendar year rates for maintenance taxes and fees on gross premiums of insurers for the lines of insurance specified in paragraphs (1) - (9) of the subsection. Subsection (a)(1) sets the rate for motor vehicle insurance at .055 of 1 percent under Insurance Code §254.002. Subsection (a)(2) sets the rate for casualty insurance and fidelity, guaranty, and surety bonds at .077 of 1 percent under Insurance Code §253.002. Subsection (a)(3) sets the rate for fire insurance and allied lines, including inland marine, at .341 of 1 percent under Insurance Code §252.002.

Paragraphs (4) - (8) of subsection (a) set rates for workers' compensation insurance; subsection (a)(4) sets a rate for workers' compensation insurance at .065 of 1 percent under Insurance Code §255.002. Subsection (a)(5) sets a rate for workers' compensation insurance at 1.478 percent under Labor Code §403.003. Subsection (a)(6) sets a rate for workers' compensation insurance at .015 of 1 percent under Labor Code §405.003. Subsection (a)(7) sets a rate for workers' compensation insurance at 1.478 percent under Labor Code §407A.301. Subsection (a)(8) sets a rate for workers' compensation insurance at .065 of 1 percent under Labor Code §407A.302. Subsection (a)(9) sets the rate for title insurance at .103 of 1 percent under Insurance Code §271.004.

Subsection (b) establishes the rates for maintenance taxes and fees for calendar year 2015 for life, health, and accident insurance and the gross considerations for annuity and endowment contracts, setting them at .040 of 1 percent under Insurance Code §257.002.

Subsection (c) establishes the rates for maintenance taxes for calendar year 2015 for entities specified in paragraphs (1) - (3) of the subsection. Subsection (c)(1) sets the rate for single-service HMOs at $.28 per enrollee, for multiservice HMOs at $.84 per enrollee, and for limited service HMOs at $.28 per enrollee, under Insurance Code §258.003. Subsection (c)(2) sets the rate for third party administrators at .013 of 1 percent of the correctly reported gross amount of administrative or service fees under Insurance Code §259.003. Subsection (c)(3) sets the rate for nonprofit legal services corporations at .022 of 1 percent of the correctly reported gross revenues under Insurance Code §260.002.

Subsection (d) establishes the rates for maintenance taxes for certified self-insurers to support the workers' compensation research and evaluation group in calendar year 2016. Subsection (d) sets a rate of .015 of 1 percent of the tax base calculated under Labor Code §405.003, and Labor Code §407.104(b) specifies that the maintenance tax must be billed to the certified self-insurer by DWC.

Subsection (e) establishes the rates for maintenance taxes for workers' compensation self-insurance groups under Labor Code

§405.003 and §407A.301 to support the workers' compensation research and evaluation group in calendar year 2016. Subsection (e) sets a rate of .015 percent of 1 percent of the tax base calculated under Labor Code §407.103(b).

Subsection (f) establishes a self-insurer maintenance tax for certified self-insurers under Labor Code §407.103 and §407.104. The rate set by subsection (f) is 1.478 percent of the tax base calculated under Labor Code §407.103(b), and subsection Labor Code §407.104(b) provides that it must be billed to the certified self-insurer by DWC.

Subsection (g) notes that the enactment of SB 14, 78th Legislature, Regular Session (2003), relating to certain insurance rates, forms, and practices did not affect the calculation of the maintenance tax rates or the assessment of the taxes.

Subsection (h) provides for the taxes assessed under §1.414(a) - (c), and (e) to be payable and due to the Comptroller of Public Accounts on March 1, 2016.

SUMMARY OF COMMENTS. The department did not receive any comments on the published proposal.

STATUTORY AUTHORITY. The amendments are adopted under Insurance Code §§201.001(a)(1), (b), and (c); 201.052(a), (d), and (e); 251.001; 252.001 - 252.003; 253.001 - 253.003; 254.001 - 254.003; 255.001 - 255.003; 257.001 - 257.003; 258.002 - 258.004; 259.002 - 259.004; 260.001 - 260.003; 271.002 - 271.006; 964.068; and 36.001; and Labor Code §§403.002, 403.003, 403.005, 405.003(a) - (c), 407.103, 407.104(b), 407A.301, and 407A.302.

Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the commissioner or comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) states that the commissioner shall administer money in the Texas Department of Insurance operating account and may spend money from the account in accordance with state law, rules adopted by the commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

Insurance Code §201.052(a) requires the department to reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the comptroller in administering taxes imposed under the Insurance Code or another insurance law of Texas. Section 201.052(d) provides that in setting maintenance taxes for each fiscal year, the commissioner shall ensure that the amount of taxes imposed is sufficient to fully reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the comptroller in administering taxes imposed under the Insurance Code or another insurance law of Texas. Section 201.052(e) provides that if the amount of maintenance taxes collected is not sufficient to reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the comptroller, other money in the Texas Department of Insurance operating account shall be used to reimburse the appropriate portion of the general revenue fund.

Insurance Code §251.001 directs the commissioner to annually determine the rate of assessment of each maintenance tax imposed under Insurance Code Title 3, Subtitle C.

Insurance Code §252.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §252.003. Insurance Code §252.001 also specifies that the tax required by Insurance Code Chapter 252 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 252.

Insurance Code §252.002 provides that the rate of assessment set by the commissioner may not exceed 1.25 percent of the gross premiums subject to taxation under Insurance Code §252.003. Section 252.002(b) provides that the commissioner must annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under Insurance Code Chapters 1807, 2001-2006, 2171, 6001, 6002, and 6003; Chapter 5, Subchapter C; Chapter 544, Subchapter H; Chapter 1806, Subchapter D; and §403.002; Government Code §§417.007, 417.008, and 417.009; and Occupations Code Chapter 2154.

Insurance Code §252.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 252 on the correctly reported gross premiums from writing insurance in Texas against loss or damage by bombardment; civil war or commotion; cyclone; earthquake; excess or deficiency of moisture; explosion as defined by Insurance Code §2002.006(b); fire; flood; frost and freeze; hail, including loss by hail on farm crops; insurrection; invasion; lightning; military or usurped power; an order of a civil authority made to prevent the spread of a conflagration, epidemic, or catastrophe; rain; riot; the rising of the waters of the ocean or its tributaries; smoke or smudge; strike or lockout; tornado; vandalism or malicious mischief; volcanic eruption; water or other fluid or substance resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes, or other conduits or containers; weather or climatic conditions; windstorm; an event covered under a home warranty insurance policy; or an event covered under an inland marine insurance policy.

Insurance Code §253.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §253.003. Section 253.001 also provides that the tax required by Insurance Code Chapter 253 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 253.

Insurance Code §253.002 provides that the rate of assessment set by the commissioner may not exceed 0.4 percent of the gross premiums subject to taxation under Insurance Code §253.003. Section 253.002(b) provides that the commissioner must annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under Insurance Code §253.003.

Insurance Code §253.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 253 on the correctly reported gross premiums from writing a class of insurance specified under Insurance Code Chapters 2008, 2251, and 2252; Chapter 5, Subchapter B; Chapter 1806, Subchapter C; Chapter 2301, Subchapter A; and Title 10, Subtitle B.

Insurance Code §254.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §254.003. Section 254.001 also provides that the tax required by Insurance Code Chapter 254 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 254.

Insurance Code §254.002 provides that the rate of assessment set by the commissioner may not exceed 0.2 percent of the gross premiums subject to taxation under Insurance Code §254.003. Section 254.002 also provides that the commissioner must annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating motor vehicle insurance. Section 254.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 254 on the correctly reported gross premiums from writing motor vehicle insurance in Texas, including personal and commercial automobile insurance.

Insurance Code §255.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §255.003, including a stock insurance company, mutual insurance company, reciprocal or interinsurance exchange, and Lloyd's plan. Section 255.001 also provides that the tax required by Insurance Code Chapter 255 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 255.

Insurance Code §255.002 provides that the rate of assessment set by the commissioner may not exceed 0.6 percent of the gross premiums subject to taxation under Insurance Code §255.003. Section 255.002(b) provides that the commissioner must annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating workers' compensation insurance.

Insurance Code §255.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 254 on the correctly reported gross premiums from writing workers' compensation insurance in Texas, including the modified annual premium of a policyholder that purchases an optional deductible plan under Insurance Code Chapter 2053, Subchapter E. The section also provides that the rate of assessment must be applied to the modified annual premium before application of a deductible premium credit.

Insurance Code §257.001(a) imposes a maintenance tax on each authorized insurer, including a group hospital service corporation, managed care organization, local mutual aid association, statewide mutual assessment company, stipulated premium company, and stock or mutual insurance company, that collects from residents of this state gross premiums or gross considerations subject to taxation under Insurance Code §257.003. Section 257.001(a) also provides that the tax required by Chapter 257 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 257.

Insurance Code §257.002 provides that the rate of assessment set by the commissioner may not exceed 0.04 percent of the gross premiums subject to taxation under Insurance Code §257.003. Section 257.002(b) provides that the commissioner must annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating life, health, and accident insurers. Section 257.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 257 on the correctly reported gross premiums collected from writing life, health, and accident insurance in Texas, as well as gross considerations collected from writing annuity or endowment contracts in Texas. The section also provides that gross premiums on which an assessment is based under Insurance Code Chapter 257 may not include premiums received from the United States for insurance contracted for by the United States in accordance with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. §§1395c et seq.) and its subsequent amendments; or premiums paid on group health, accident, and life policies in which the group covered by the policy consists of a single nonprofit trust established to provide coverage primarily for employees of a municipality, county, or hospital district in this state; or a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

Insurance Code §258.002 imposes a per capita maintenance tax on each authorized HMO with gross revenues subject to taxation under Insurance Code §258.004. Section 258.002 also provides that the tax required by Insurance Code Chapter 258 is in addition to other taxes that are not in conflict with Insurance Code Chapter 258.

Insurance Code §258.003 provides that the rate of assessment set by the commissioner on HMOs may not exceed $2 per enrollee. Section 258.003 also provides that the commissioner must annually adjust the rate of assessment of the per capita maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating HMOs. Section 258.003 also provides that the rate of assessment may differ between basic health care plans, limited health care service plans, and single health care service plans and must equitably reflect any differences in regulatory resources attributable to each type of plan.

Insurance Code §258.004 provides that an HMO must pay per capita maintenance taxes under Insurance Code Chapter 258 on the correctly reported gross revenues collected from issuing health maintenance certificates or contracts in Texas. Section 258.004 also provides that the amount of maintenance tax assessed may not be computed based on enrollees who, as individual certificate holders or their dependents, are covered by a master group policy paid for by revenues received from the United States for insurance contracted for by the United States in accordance with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. §§1395c et seq.) and its subsequent amendments; revenues paid on group health, accident, and life certificates or contracts in which the group covered by the certificate or contract consists of a single nonprofit trust established to provide coverage primarily for employees of a municipality, county, or hospital district in this state; or a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

Insurance Code §259.002 imposes a maintenance tax on each authorized third party administrator with administrative or service

fees subject to taxation under Insurance Code §259.004. Section 259.002 also provides that the tax required by Insurance Code Chapter 259 is in addition to other taxes imposed that are not in conflict with the chapter. Section 259.003 provides that the rate of assessment set by the commissioner may not exceed 1.0 percent of the administrative or service fees subject to taxation under Insurance Code §259.004. Section 259.003(b) provides that the commissioner must annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses of regulating third party administrators.

Insurance Code §260.001 imposes a maintenance tax on each nonprofit legal services corporation subject to Insurance Code Chapter 961 with gross revenues subject to taxation under Insurance Code §260.003. Section 260.001 also provides that the tax required by Insurance Code Chapter 260 is in addition to other taxes imposed that are not in conflict with the chapter. Section 260.002 provides that the rate of assessment set by the commissioner may not exceed 1.0 percent of the corporation's gross revenues subject to taxation under Insurance Code §260.003. Section 260.002 also provides that the commissioner must annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating nonprofit legal services corporations. Section 260.003 provides that a nonprofit legal services corporation must pay maintenance taxes under this chapter on the correctly reported gross revenues received from issuing prepaid legal services contracts in this state.

Insurance Code §271.002 imposes a maintenance fee on all premiums subject to assessment under Insurance Code §271.006. Section 271.002 also specifies that the maintenance fee is not a tax and must be reported and paid separately from premium and retaliatory taxes. Section 271.003 specifies that the maintenance fee is included in the division of premiums and may not be separately charged to a title insurance agent. Section 271.004 provides that the commissioner must annually determine the rate of assessment of the title insurance maintenance fee. Section 271.004 also provides that in determining the rate of assessment, the commissioner must consider the requirement to reimburse the appropriate portion of the general revenue fund under Insurance Code §201.052. Section 271.005 provides that rate of assessment set by the commissioner may not exceed 1.0 percent of the gross premiums subject to assessment under Insurance Code §271.006. Section 271.005 also provides that the commissioner must annually adjust the rate of assessment of the maintenance fee so that the fee imposed that year, together with any unexpended funds produced by the fee, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating title insurance. Section 271.006 requires an insurer to pay maintenance fees under Insurance Code Chapter 271 on the correctly reported gross premiums from writing title insurance in Texas.

Insurance Code §964.068 provides that a captive insurance company is subject to maintenance tax under Insurance Code, Title 3, Subtitle C, on the correctly reported gross premiums from writing insurance on risks located in this state as applicable to the individual lines of business written by the captive insurance company.

Labor Code §403.002 imposes an annual maintenance tax on each insurance carrier to pay the costs of administering the Texas Workers' Compensation Act and to support the prosecution of workers' compensation insurance fraud in Texas. Labor Code §403.002 also provides that the assessment may not exceed an amount equal to 2.0 percent of the correctly reported gross workers' compensation insurance premiums, including the modified annual premium of a policyholder that purchases an optional deductible plan under Insurance Code Article 5.55C. Labor Code §403.002 also provides that the rate of assessment must be applied to the modified annual premium before application of a deductible premium credit. In addition, Labor Code §403.002 states that a workers' compensation insurance company is taxed at the rate established under Labor Code §403.003, and that the tax must be collected in the manner provided for collection of other taxes on gross premiums from a workers' compensation insurance company as provided in Insurance Code Chapter 255. Labor Code §403.002 states that each certified self-insurer must pay a fee and maintenance taxes as provided by Labor Code Chapter 407, Subchapter F.

Labor Code §403.003 requires the commissioner to set and certify to the comptroller the rate of maintenance tax assessment, taking into account: (i) any expenditure projected as necessary for DWC and OIEC to administer the Texas Workers' Compensation Act during the fiscal year for which the rate of assessment is set and reimburse the general revenue fund as provided by Insurance Code §201.052; (ii) projected employee benefits paid from general revenues; (iii) a surplus or deficit produced by the tax in the preceding year; (iv) revenue recovered from other sources, including reappropriated receipts, grants, payments, fees, gifts, and penalties recovered under the Texas Workers' Compensation Act; and (v) expenditures projected as necessary to support the prosecution of workers' compensation insurance fraud. Labor Code §403.003 also provides that in setting the rate of assessment, the commissioner may not consider revenue or expenditures related to the State Office of Risk Management, the workers' compensation research functions of the department under Labor Code Chapter 405, or any other revenue or expenditure excluded from consideration by law.

Labor Code §403.005 provides that the commissioner must annually adjust the rate of assessment of the maintenance tax imposed under §403.003 so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses of administering the Texas Workers' Compensation Act.

Labor Code §405.003(a) - (c) establishes a maintenance tax on insurance carriers and self-insurance groups to fund the workers' compensation research and evaluation group, it provides for the department to set the rate of the maintenance tax based on the expenditures authorized and the receipts anticipated in legislative appropriations, and it provides that the tax is in addition to all other taxes imposed on insurance carriers for workers' compensation purposes.

Labor Code §407.103 imposes a maintenance tax on each workers' compensation certified self-insurer for the administration of DWC and OIEC and to support the prosecution of workers' compensation insurance fraud in Texas. Labor Code §407.103 also provides that not more than 2.0 percent of the total tax base of all certified self-insurers, as computed under subsection (b) of the section, may be assessed for the maintenance tax established under Labor Code §407.103. Labor Code §407.103 also pro-

vides that to determine the tax base of a certified self-insurer for purposes of Labor Code Chapter 407, the department shall multiply the amount of the certified self-insurer's liabilities for workers' compensation claims incurred in the previous year, including claims incurred but not reported, plus the amount of expense incurred by the certified self-insurer in the previous year for administration of self-insurance, including legal costs, by 1.02. Labor Code §407.103 also provides that the tax liability of a certified self-insurer under the section is the tax base computed under subsection (b) of the section multiplied by the rate assessed workers' compensation insurance companies under Labor Code §403.002 and §403.003. Finally, Labor Code §407.103 provides that in setting the rate of maintenance tax assessment for insurance companies, the commissioner may not consider revenue or expenditures related to the operation of the self-insurer program under Labor Code Chapter 407.

Labor Code §407.104(b) provides that the department must compute the fee and taxes of a certified self-insurer and notify the certified self-insurer of the amounts due. Labor Code §407.104(b) also provides that a certified self-insurer must remit the taxes and fees to DWC.

Labor Code §407A.301 imposes a self-insurance group maintenance tax on each workers' compensation self-insurance group based on gross premium for the group's retention. Labor Code §407A.301 provides that the self-insurance group maintenance tax is to pay for the administration of DWC, the prosecution of workers' compensation insurance fraud in Texas, the research functions of the department under Labor Code Chapter 405, and the administration of OIEC under Labor Code Chapter 404. Labor Code §407A.301 also provides that the tax liability of a group under subsection (a)(1) and (2) of the section is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Labor Code §403.002 and §403.003. Labor Code §407A.301 also provides that the tax liability of a group under subsection (a)(3) of the section is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Labor Code §405.003. Additionally, Labor Code §407A.301 provides that the tax under the section does not apply to premium collected by the group for excess insurance. Finally, Labor Code §407A.301(e) provides that the tax under the section must be collected by the comptroller as provided by Insurance Code Chapter 255 and Insurance Code §201.051.

Labor Code §407A.302 requires each workers' compensation self-insurance group to pay the maintenance tax imposed under Insurance Code Chapter 255, for the administrative costs incurred by the department in implementing Labor Code Chapter 407A. Labor Code §407A.302 provides that the tax liability of a workers' compensation self-insurance group under the section is based on gross premium for the group's retention and does not include premium collected by the group for excess insurance. Labor Code §407A.302 also provides that the maintenance tax assessed under the section is subject to Insurance Code Chapter 255, and that it must be collected by the comptroller in the manner provided by Insurance Code Chapter 255.

Insurance Code §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.

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 December 16, 2015.

TRD-201505664
Norma Garcia
General Counsel
Texas Department of Insurance
Effective date: January 5, 2016
Proposal publication date: November 13, 2015
For further information, please call: (512) 676-6584

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CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER J. EXAMINATION EXPENSES AND ASSESSMENTS

28 TAC §7.1001

The Texas Department of Insurance adopts amendments to 28 Texas Administrative Code §7.1001, concerning assessments to cover the expenses of examining domestic and foreign insurance companies and self-insurance groups providing workers' compensation insurance. The amendments are adopted without changes to the proposed text published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 7964).

Under Government Code §2001.033(a)(1), the department's reasoned justification for these amendments is set out in this order, which includes the preamble and rules.

REASONED JUSTIFICATION. The amendments are necessary to establish the examination expenses to be levied against and collected from each domestic and foreign insurance company and each self-insurance group providing workers' compensation insurance examined during the 2016 calendar year. The amendments are also necessary to establish the rates of assessment to be levied against and collected from each domestic insurance company, based on admitted assets and gross premium receipts for the 2015 calendar year, and from each foreign insurance company examined during the 2015 calendar year using the same methodology.

The amendments are based on requirements in Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155; 401.156; 843.156(h); and 36.001; and Labor Code §407A.252(b).

The following paragraphs explain the methodology used to determine examination overhead assessments for 2016.

In general, the department's 2016 revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; premium finance exam assessments; and funds in the self-directed budget account, as established under Insurance Code §401.252) is determined by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2015.

To determine total cost need, the department combined costs from the following: (i) appropriations set out in Chapter 1281 (HB 1), Acts of the 84th Legislature, Regular Session, 2015 (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the Gen-

eral Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by Insurance Code Subchapters D and F of Chapter 401 as approved by the commissioner of insurance for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses and administrative support costs; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of the 2016 fiscal year until the next assessment collection period in 2017. From these combined costs, the department subtracted costs allocated to the Division of Workers' Compensation and the workers' compensation research and evaluation group.

The department determined how to allocate the revenue need attributed to each funding source using the following method:

Each section within the department that provides services directly to the public or the insurance industry allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the examination assessment, the self-directed budget account as limited by Insurance Code §401.252, or another funding source. The department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculated a percentage for each funding source by dividing the total directly allocated to each funding source by the total of the direct cost. The department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the commissioner's administration, and information technology. The department calculated the total of direct costs and administrative support costs for each funding source.

To complete the calculation of the revenue need, the department combined the costs allocated to the examination overhead assessment source and the self-directed budget account source. The department then subtracted the fiscal year 2016 estimated amount of examination direct billing revenue from the amount of the combined costs of the examination overhead assessment source and the self-directed budget account source. The resulting balance is the amount of the examination revenue needed to calculate the examination overhead assessment rates.

To calculate the assessment rates, the department allocated 50 percent of the revenue need to admitted assets and 50 percent to gross premium receipts. The department divided the revenue need for gross premium receipts by the total estimated gross premium receipts for calendar year 2015 to determine the proposed rate of assessment for gross premium receipts. The department divided the revenue need for admitted assets by the total estimated admitted assets for calendar year 2015 to determine the proposed rate of assessment for admitted assets.

The 2015 General Appropriations Act does not contain a rider directing the department to reimburse the General Revenue Fund from the Texas Department of Insurance Operating Fund Account for the costs of insurance premium tax credits for examination fees and overhead assessments, which will result in the reduction of the revenue need and rates. Although Insurance Code §401.156(a) allows the department to use dollars received from the examination overhead assessment to pay for the reimbursement of premium tax credits for examination costs, the reimbursement is no longer necessary.

The following paragraphs provide a brief summary and analysis of the reasons for the adopted section.

The amendment to the section heading reflects the year for which the proposed assessment will be applicable. The amendments in subsections (b)(1), (c)(1), (c)(2)(A), (c)(2)(B), (c)(3), and (d) reflect the appropriate year for accurate application of the section.

The amendment in subsection (b)(2) deletes the language in that subsection stating that a foreign insurer must pay the department an additional assessment of 35 percent under Insurance Code §401.155. The language in subsection (b)(2) is no longer necessary because the amendment adds language to subsection (b)(2) that will implement HB 2163, 83rd Legislature, Regular Session (2013) (Insurance Code §401.152(a-1)), and impose an annual assessment on foreign insurers that were examined by the department in 2015. The assessment will be sufficient to meet expenses necessary for examinations in an amount computed in the same manner as the amount imposed for domestic insurers.

The amendments in subsection (c)(2)(A) and (c)(2)(B) update assessments to reflect the methodology the department has developed for 2016, which is previously addressed.

The amendment to subsection (c)(3) adds the language "because of a redomestication" to clarify that the proportional assessment for a company that was a domestic insurance company for less than a full calendar year applies only to a foreign insurance company that redomesticates to Texas and not to a foreign insurance company that merges with a Texas domestic insurance company.

Nonsubstantive changes have been made to conform with the department's writing style guides.

Section 7.1001(a) provides that, for purposes of the section, the term "insurance company" includes a health maintenance organization (HMO) as defined in Insurance Code §843.002.

Section 7.1001(b) establishes the examination expenses and assessments applicable to an insurer not organized under the laws of Texas (foreign insurance company). Section 7.1001(b)(1) requires a foreign insurance company to reimburse the department for the salary and examination expenses of each examiner participating in an examination of the insurance company, describes how to calculate the part of an examiner's salary included in the examination fee, and provides that expenses the department assesses are those actually incurred by the examiner to the extent permitted by law. Section 7.1001(b)(2) requires a foreign insurance company examined in 2015, or an exam beginning in 2015 and completed in 2016, to pay an annual assessment in an amount sufficient to meet all other expenses and disbursements necessary to comply with the law in an amount computed in the same manner as the amount imposed for domestic insurers under subsection (c). Section 7.1001(b)(3) provides that a foreign insurance company must pay the reimbursements and payments required by the subsection to the department as specified in each itemized bill the department provides to the foreign insurance company.

Section 7.1001(c) establishes the examination expenses and assessments applicable to a domestic insurance company. Section 7.1001(c)(1) requires a domestic insurance company to pay the actual salaries and expenses of the examiners allocable to

an examination of the company, describes how to calculate the part of an examiner's salary included in the examination fee, and provides that expenses assessed must be those actually incurred by the examiner to the extent permitted by law.

Section 7.1001(c)(2) establishes the rates for the overhead assessment applicable to a domestic insurance company. Section 7.1001(c)(2)(A) provides that the overhead assessment applicable to a domestic insurance company includes .00133 of 1 percent of the admitted assets of the company as of December 31, 2015, taking into consideration the annual admitted assets that are not attributable to 90 percent of pension plan contracts as defined in §818(a) of the Internal Revenue Code of 1986 (26 U.S.C. §818(a)). Section 7.1001(c)(2)(B) provides that the overhead assessment applicable to a domestic insurance company includes .00415 of 1 percent of the gross premium receipts of the company for the year 2015, taking into consideration the annual premium receipts that are not attributable to 90 percent of pension plan contracts as defined in §818(a) of the Internal Revenue Code of 1986 (26 U.S.C. §818(a)).

Section 7.1001(c)(3) provides that, except as provided by paragraph (4) of the subsection, if a company was a domestic insurance company for less than a full year during calendar year 2015 because of a redomestication, the overhead assessment for the company is the overhead assessment required under paragraph (2)(A) and (B) of the subsection divided by 365 and multiplied by the number of days the company was a domestic insurance company during calendar year 2015.

Section 7.1001(c)(4) provides that if the overhead assessment required under paragraph (2)(A) and (B) or paragraph (3) of the subsection produces an overhead assessment of less than $25, a domestic insurance company must pay a minimum overhead assessment of $25.

Section 7.1001(c)(5) provides that the department will base the overhead assessments on the assets and premium receipts reported in a domestic insurance company's annual statement.

Section 7.1001(c)(6) provides that for the purpose of applying paragraph (2)(B) of the subsection, the term "gross premium receipts" does not include insurance premiums for insurance contracted for by a state or federal government entity to provide welfare benefits to designated welfare recipients or contracted for in accord with or in furtherance of the Human Resources Code, Title 2, or the federal Social Security Act (42 U.S.C. §§301 et seq.)

Section 7.1001(d) establishes the examination expenses applicable to a workers' compensation self-insurance group. The subsection requires a workers' compensation self-insurance group to pay the actual salaries and expenses of the examiners allocable to an examination of the company, it describes how to calculate the part of an examiner's salary included in the examination fee, and it provides that expenses the department assesses are those actually incurred by the examiner to the extent permitted by law.

Section 7.1001(e) requires a domestic insurance company to pay the overhead assessment required under §7.1001(c) to the department not later than 30 days from the invoice date.

SUMMARY OF COMMENTS. The department did not receive any comments on the published proposal.

STATUTORY AUTHORITY. The amendments are adopted under Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155; 401.156; 843.156(h); and 36.001; and Labor Code §407A.252(b).

Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the commissioner or comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) states that the commissioner must administer money in the Texas Department of Insurance operating account and may spend money from the account in accordance with state law, rules adopted by the commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

Insurance Code §401.151 provides that a domestic insurer examined by the department or under the department's authority must pay the expenses of the examination in an amount the commissioner certifies as just and reasonable.

Insurance Code §401.151 also provides that the department must collect an assessment at the time of the examination to cover all expenses attributable directly to that examination, including the salaries and expenses of department employees and expenses described by Insurance Code §803.007. Section 401.151 also requires that the department impose an annual assessment on domestic insurers in an amount sufficient to meet all other expenses and disbursements necessary to comply with the laws of Texas relating to the examination of insurers. Additionally, §401.151 states that in determining the amount of assessment, the department will consider the insurer's annual premium receipts or admitted assets, or both, that are not attributable to 90 percent of pension plan contracts as defined by §818(a), Internal Revenue Code of 1986; or the total amount of the insurer's insurance in force.

Insurance Code §401.152 provides that an insurer not organized under the laws of Texas must reimburse the department for the salary and expenses of each examiner participating in an examination of the insurer and for other department expenses that are properly allocable to the department's participation in the examination. Section 401.152(a-1) states that the department must also impose an annual assessment on insurers not organized under the laws of this state subject to examination as described by this section in an amount sufficient to meet all other expenses and disbursements necessary to comply with the laws of this state relating to the examination of insurers, and the amount imposed must be computed in the same manner as the amount imposed under §401.151(c) for domestic insurers. Section 401.152 also requires an insurer to pay the expenses under the section directly to the department on presentation of an itemized written statement from the commissioner. Additionally, §401.152 provides that the commissioner must determine the salary of an examiner participating in an examination of an insurer's books or records located in another state based on the salary rate recommended by the National Association of Insurance Commissioners or the examiner's regular salary rate.

Insurance Code §401.155 requires the department to impose additional assessments against insurers on a pro rata basis as necessary to cover all expenses and disbursements required by law and to comply with Insurance Code Chapter 401, Subchapter D, and §§401.103 - 401.106.

Insurance Code §401.156 requires the department to deposit any assessments or fees collected under Insurance Code Chapter 401, Subchapter D, relating to the examination of insurers and other regulated entities by the financial examinations di-

vision or actuarial division, as those terms are defined by Insurance Code §401.251, to the credit of an account with the Texas Treasury Safekeeping Trust Company to be used exclusively to pay examination costs, as defined by Insurance Code §401.251, to reimburse the Texas Department of Insurance operating account for administrative support costs, and for premium tax credits for examination costs and examination overhead assessments. Additionally, §401.156 provides that revenue not related to the examination of insurers or other regulated entities by the financial examinations division or actuarial division be deposited to the credit of the Texas Department of Insurance operating account.

Insurance Code §843.156(h) provides that Insurance Code Chapter 401, Subchapter D, applies to an HMO, except to the extent that the commissioner determines that the nature of the examination of an HMO renders the applicability of those provisions clearly inappropriate.

Labor Code §407A.252(b) provides that the commissioner may recover the expenses of an examination of a workers' compensation self-insurance group under Insurance Code Article 1.16, which was recodified as Insurance Code §§401.151, 401.152, 401.155, and 401.156 by HB 2017, 79th Legislature, Regular Session (2005), to the extent the maintenance tax under Labor

§407A.302 does not cover those expenses.

Insurance Code §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.

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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For further information, please call: (512) 676-6584

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 354. MEMORANDA OF UNDERSTANDING

31 TAC §354.4

The Texas Water Development Board (TWDB) adopts without changes amendments to Title 31, Texas Administrative Code (TAC) §354.4, to incorporate into rule an amended memorandum of understanding (MOU) between the TWDB and the Texas Department of Agriculture, Office of Rural Affairs (TDA), as published in the September 11, 2015 issue of the *Texas Register* (40 TexReg 6035).

BACKGROUND AND SUMMARY OF THE FACTUAL ISSUES FOR THE ADOPTED AMENDMENT.

Pursuant to the General Appropriations Act, H.B. 1, 84th Leg., R.S., Rider 8, page VI-58 of the TWDB appropriation, and Rider 20, page VI-7 of the TDA appropriation, TWDB and TDA are required to enter into a MOU. The provisions require the TWDB to coordinate funds out of the Economically Distressed Areas Program (EDAP) administered by the TWDB and the Colonia Fund administered by the TDA as outlined in an MOU to maximize delivery of the funds and minimize administrative delay in their expenditure. The adopted amendments describe the revised MOU for the period from September 1, 2015 to August 31, 2017.

DISCUSSION OF THE AMENDMENTS.

The adopted MOU is essentially the same as the current MOU; the adopted amendments are discussed as follows.

Recitals: Citations to the General Appropriations Act (GAA) have been updated to reflect citation to the Appropriations Act relevant to this MOU.

Period of Performance: The period of performance has been revised to reflect the biennium covered by the GAA. The period of performance is September 1, 2015 through August 31, 2017.

Reporting Requirements: The deadline for the report has been revised in accordance with the language in the GAA.

Other non-substantive, typographical amendments to 31 TAC §354.4 have been adopted.

REGULATORY ANALYSIS

The board has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to make conforming amendments based on the General Appropriations Act to an existing MOU between the TDA and TWDB and to adopt by rule the MOU as required by Texas Water Code §6.104.

Even if the adopted rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed any standard set by a federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a

requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency, but rather it is also proposed under authority of Texas Water Code §6.104. Therefore, this adopted rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT

The board evaluated this adopted rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to adopt by rule the MOU between TDA and the TWDB as required by Texas Water Code §6.104.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this adopted rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). Nevertheless, the board further evaluated this adopted rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this adopted rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the adopted rule does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENT

No comments were received.

STATUTORY AUTHORITY.

These amendments are adopted under Texas Water Code §6.104, which requires the TWDB to adopt by rule any memorandum of understanding between the TWDB and any other state agency and General Appropriations Act, SB 1, 83rd Leg., R.S., Rider 8, page VI-56 of the TWDB budget.

This adoption affects Texas Water Code §6.104.

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 December 15, 2015.

TRD-201505649
Les Trobman
General Counsel
Texas Water Development Board
Effective date: January 4, 2016
Proposal publication date: September 11, 2015
For further information, please call: (512) 463-8061

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER F. MOTOR VEHICLE SALES TAX

34 TAC §3.68

The Comptroller of Public Accounts adopts an amendment to §3.68, United States and foreign military personnel stationed in Texas, without changes to the proposed text as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7795). The citation to the Transportation Code in subsection (c)(1) is amended to reflect the redesignation of Transportation Code, §520.031 to §501.145 by House Bill 2357, 82nd Legislature, 2011.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Transportation Code, §501.145 (Filing by Purchaser; Application for Transfer of Title).

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

Filed with the Office of the Secretary of State on December 18, 2015.

TRD-201505833
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Effective date: January 7, 2016
Proposal publication date: November 6, 2015
For further information, please call: (512) 475-0387

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SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.334

The Comptroller of Public Accounts adopts amendments to §3.334, concerning local sales and use taxes, with changes to the proposed text as published in the June 19, 2015, issue of the *Texas Register* (40 TexReg 3745). This section is amended to make nonsubstantive changes to definitions and to clarify longstanding comptroller practice regarding a seller's tax collection responsibilities when the seller is not engaged in business in a local jurisdiction.

The definition of the term "Comptroller's website" in subsection (a)(4) is amended to update the agency web address which was changed based on the Internet and Email Domain Name Management Policy from the Texas Department of Information Resources.

The definition of "place of business" in subsection (a)(14) is amended to clarify that the term "contractors" within that definition refers to a natural person who is contracted to perform work or services for another. As used in this subsection, the

term does not have the meaning assigned by §3.291 of this title (relating to Contractors). The definition is also amended to change the term "individual persons" to "natural persons" in order to clarify that the term refers to single persons and does not refer to entities recognized as having legal rights as persons.

Subsection (e) is amended to correct the subsection cited in a cross-reference to the term "place of business." The citation is changed from subsection (a)(13) to subsection (a)(14).

The comptroller received written comments from Renn Neilson of Baker Botts LLP. The comments expressed concern that §3.334(e)(4)(D) relating to the Dickinson Management District conflicts with Special District Local Laws Code, §3853.202(d).

The comptroller's position on the Dickinson Management District has not changed. It is the comptroller's view that Special District Local Laws Code, §3853.202(d) violates Article III, Section 56 of the Texas Constitution, concerning Local and Special Laws, because it attempts to relieve the comptroller's office of the duties delegated to it by Tax Code, Chapter 321. Further, the comptroller believes that the general law codified as Tax Code, §321.002(a)(3) and §321.203(m) is a later-amended general provision that applies in place of the preexisting local law. However, the comptroller agrees the agency may not invalidate a statute through the adoption of an administrative rule, and subsection (e)(4)(D) is therefore deleted.

Subsection (g) is amended to clarify a seller's local sales tax collection responsibilities. New paragraph (3) is added to specify that a seller is only required to collect local sales or use taxes imposed by a local taxing jurisdiction in which the seller is engaged in business. Existing paragraphs (3) and (4) are renumbered as paragraphs (4) and (5) respectively and delete repetitive language in subsection (h)(1).

The comptroller received written comments from John Kroll representing HMWK, LLC. These comments expressed concern that the amendment to subsection (g) regarding a seller's tax collection responsibilities are not supported by the plain language of Tax Code, Chapter 321.

Under current policy, a seller's collection responsibilities are limited to those local taxing jurisdictions in which the seller is "engaged in business." In the May 30, 2014, issue of the *Texas Register* (39 TexReg 4175), the comptroller proposed ending the "engaged in business" limitation on sellers' obligation for collecting local tax and instead requiring all sellers with nexus in the state to collect all local taxes that are due. Comments received on this proposal expressed concern that the deletion of the "engaged in business" requirement would violate the due process and commerce clauses of the U.S. Constitution. In response to the comments provided, the comptroller decided not to change sellers' local tax collection obligations when §3.334 was adopted in the December 5, 2014, issue of the *Texas Register* (39 TexReg 9597). The amendment to subsection (g) is a nonsubstantive change that clarifies longstanding comptroller practice. The proposed amendment is adopted without further change.

Subsection (h)(1) is also amended to clarify that a seller must only collect local sales taxes for those local taxing jurisdictions in which the seller is engaged in business. Paragraph (6)(C)(iii) is amended to add the phrase "in person," as orders are placed in person at temporary places of business.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, Chapters 321 (Municipal Sales and Use Tax Act), 322 (Sales and Use tax for Special Purpose Taxing Authorities), and 323 (County Sales and Use Tax Act).

§3.334. Local Sales and Use Taxes.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Cable system--The system through which a cable service provider delivers cable television or bundled cable service, as those terms are defined in §3.313 of this title (relating to Cable Television Service and Bundled Cable Service).

(2) City--An incorporated city, municipality, town, or village.

(3) City sales and use tax--The tax authorized under Tax Code, §321.101(a), including the additional municipal sales and use tax authorized under Tax Code, §321.101(b), the municipal sales and use tax for street maintenance authorized under Tax Code, §327.003, the Type A Development Corporation sales and use tax authorized under Local Government Code, §504.251, the Type B Development Corporation sales and use tax authorized under Local Government Code, §505.251, a sports and community venue project sales and use tax adopted by a city under Local Government Code, §334.081, and a municipal development corporation sales and use tax adopted by a city under Local Government Code, §379A.081. The term does not include the fire control, prevention, and emergency medical services district sales and use tax authorized under Tax Code, §321.106, or the municipal crime control and prevention district sales and use tax authorized under Tax Code, §321.108.

(4) Comptroller's website--The agency's website concerning local taxes located at: http://comptroller.texas.gov/taxinfo/local/.

(5) County sales and use tax--The tax authorized under Tax Code, §323.101, including a sports and community venue project sales and use tax adopted by a county under Local Government Code, §334.081. The term does not include the county health services sales and use tax authorized under Tax Code, §324.021, the county landfill and criminal detention center sales and use tax authorized under Tax Code, §325.021, or the crime control and prevention district sales and use tax authorized under Tax Code, §323.105.

(6) Drop shipment--A transaction in which an order is received by a seller at one location, but the item purchased is shipped by the seller from another location, or is shipped by the seller's third-party supplier, directly to a location designated by the purchaser.

(7) Engaged in business--This term has the meaning given in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules).

(8) Extraterritorial jurisdiction--An unincorporated area that is contiguous to the corporate boundaries of a city as defined in Local Government Code, §42.021

(9) Fulfill--To complete an order by transferring a taxable item directly to a purchaser at a Texas location, or to ship or deliver a taxable item to a location in Texas designated by the purchaser.

(10) Itinerant vendor--A person who travels to various locations for the purpose of receiving orders and making sales of taxable items and who does not operate a place of business. For example, a

person who sells rugs from the back of a truck that the person drives to a different location each day is an itinerant vendor. A person who sells items through vending machines is also an itinerant vendor. A salesperson that operates out of an office, place of business, or other location that provides administrative support to the salesperson is not an itinerant vendor.

(11) Kiosk--A small stand-alone area or structure:

(A) that is used solely to display merchandise or to submit orders for taxable items from a data entry device, or both;

(B) that is located entirely within a location that is a place of business of another seller, such as a department store or shopping mall; and

(C) at which taxable items are not available for immediate delivery to a purchaser.

(12) Local taxes--Sales and use taxes imposed by any local taxing jurisdiction.

(13) Local taxing jurisdiction--Any of the following:

(A) a city that imposes sales and use tax as provided under paragraph (3) of this subsection;

(B) a county that imposes sales and use tax as provided under paragraph (5) of this subsection;

(C) a special purpose district created under the Special District Local Laws Code or other provisions of Texas law that is authorized to impose sales and use tax by the Tax Code or other provisions of Texas law and as governed by the provisions of Tax Code, Chapters 321 or 323 and other provisions of Texas law; or

(D) a transit authority that imposes sales and use tax as authorized by Transportation Code, Chapters, 451, 452, 453, 457, or 460 and governed by the provisions of Tax Code, Chapter, 322.

(14) Place of business - general definition--An established outlet, office, or location operated by a seller for the purpose of selling taxable items to those other than employees, independent contractors, and natural persons affiliated with the seller. Places of business include, but are not limited to, call centers, showrooms, and clearance centers. The term also includes any location operated by a seller at which the seller receives three or more orders for taxable items during a calendar year. For example, a home office at which three or more items are sold through an online auction website is a place of business. Additional criteria for determining when a location is a place of business are provided in subsection (e) of this section for administrative offices; distribution centers, manufacturing plants, storage yards, warehouses and similar facilities; kiosks; and purchasing offices.

(15) Purchasing office--An outlet, office, facility, or any location that contracts with a retail or commercial business to process for that business invoices, purchase orders, bills of lading, or other equivalent records onto which sales tax is added, including an office operated for the purpose of buying and selling taxable goods to be used or consumed by the retail or commercial business.

(16) Seller--This term has the meaning given in §3.286 of this title and also refers to any agent or employee of the seller.

(17) Special purpose district--A local governmental entity authorized by the Texas legislature for a specific purpose, such as crime control, a local library, emergency services, county health services, or a county landfill and criminal detention center.

(18) Storage--This term has the meaning given in §3.346 of this title (relating to Use Tax).

(19) Temporary place of business--A location operated by a seller for a limited period of time for the purpose of selling and receiving orders for taxable items and where the seller has inventory available for immediate delivery to a purchaser. For example, a person who rents a booth at a weekend craft fair or art show to sell and take orders for jewelry, or a person who maintains a facility at a job site to rent tools and equipment to a contractor during the construction of real property, has established a temporary place of business.

(20) Transit authority--A metropolitan rapid transit authority (MTA), advanced transportation district (ATD), regional or subregional transportation authority (RTA), city transit department (CTD), county transit authority (CTA), regional mobility authority (RMA) or coordinated county transportation authority created under Transportation Code, Chapters 370, 451, 452, 453, 457, or 460.

(21) Traveling salesperson--A seller, or an agent or employee of a seller, who visits potential purchasers in person to solicit sales, and who does not carry inventory ready for immediate sale, but who may carry samples or perform demonstrations of items for sale.

(22) Two percent cap--A reference to the general rule that, except as otherwise provided by Texas law and as explained in this section, a seller cannot collect, and a purchaser is not obligated to pay, more than 2.0% of the sales price of a taxable item in total local sales and use taxes for all local taxing jurisdictions

(23) Use--This term has the meaning given in §3.346 of this title.

(24) Use tax--A tax imposed on the storage, use or other consumption of a taxable item in this state.

(b) Effect of other law.

(1) Tax Code, Title 2, Subtitles A (General Provisions) and B (Enforcement and Collection), Tax Code, Chapter 141 (Multistate Tax Compact) and Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax) apply to transactions involving local taxes. Related sections of this title and comptroller rulings shall also apply with respect to local taxes. This includes authorities such as court cases and federal law that affect whether an item is taxable or is excluded or exempt from taxation.

(2) Permits, exemption certificates, and resale certificates required by Tax Code, Chapter 151, shall also satisfy the requirements for collecting and remitting local taxes, unless otherwise indicated by this section or other sections of this title. For example, see subsection (n) of this section concerning prior contract exemptions.

(3) Any provisions in this section or other sections of this title related to a seller's responsibilities for collecting and remitting local taxes to the comptroller shall also apply to a purchaser if the seller does not collect local taxes that are due. The comptroller may proceed against the seller or purchaser for the local tax owed by either.

(c) Tax rates. Except as otherwise provided by law, no local governmental entity may adopt or increase a sales and use tax if, as a result of the adoption or increase of the tax, the combined rate of all sales and use taxes imposed by local taxing jurisdictions having territory in the local governmental entity would exceed 2.0% at any location within the boundaries of the local governmental entity's jurisdiction. The following are the local tax rates that may be adopted.

(1) Cities. Cities may impose sales and use tax at a rate of up to 2.0%.

(2) Counties. Counties may impose sales and use tax at rates ranging from 0.5% to 1.5%.

(3) Special purpose districts. Special purpose districts may impose sales and use tax at rates ranging from 0.125% to 2.0%.

(4) Transit authorities. Transit authorities may impose sales and use tax at rates ranging from 0.25% to 1.0%.

(d) Jurisdictional boundaries, combined areas, and city tax imposed through strategic partnership agreements.

(1) Jurisdictional boundaries.

(A) City boundaries. City taxing jurisdictional boundaries cannot overlap one another and a city cannot impose a sales and use tax in an area that is already within the jurisdiction of another city.

(B) County boundaries. County tax applies to all locations within that county.

(C) Special purpose district and transit authority boundaries. Special purpose districts and transit authorities may cross or share boundaries with other local taxing jurisdictions and may encompass, in whole or in part, other local taxing jurisdictions, including cities and counties. A geographic location or address in this state may lie within the boundaries of more than one special purpose district or more than one transit authority.

(D) Extraterritorial jurisdictions. Except as otherwise provided by paragraph (3) of this subsection concerning strategic partnership agreements and subsection (l)(5) of this section concerning the City of El Paso and Fort Bliss, city sales and use tax does not apply to taxable sales that are consummated outside the boundaries of the city, including sales made in a city's extraterritorial jurisdiction. However, an extraterritorial jurisdiction may lie within the boundaries of a special purpose district, transit authority, county, or any combination of the three, and the sales and use taxes for those jurisdictions would apply to those sales.

(2) Combined areas. A combined area is an area where the boundaries of a city overlap the boundaries of one or more other local taxing jurisdictions as a result of an annexation of additional territory by the city, and where, as the result of the imposition of the city tax in the area in addition to the local taxes imposed by the existing taxing jurisdictions, the combined local tax rate would exceed 2.0%. The comptroller shall make accommodations to maintain a 2.0% rate in any combined area. Sellers engaged in transactions on which local sales or use taxes are due in a combined area, or persons who must self-accrue and remit tax directly to the comptroller, must use the combined area local code when reporting the tax rather than the codes for the individual city, county, special purpose districts, or transit authorities that make up the combined area. The comptroller shall distribute the tax revenue generated in these combined areas to the local taxing jurisdictions located in the combined areas as provided in Tax Code, §321.102 or Health and Safety Code, §775.0754. Combined areas are identified on the comptroller's website.

(3) City tax imposed through strategic partnership agreements.

(A) The governing bodies of a district, as defined in Local Government Code, §43.0751, and a city may enter into a limited-purpose annexation agreement known as a strategic partnership agreement. Under this agreement, the city may impose sales and use tax within all or part of the boundaries of a district. Areas within a district that are annexed for this limited purpose are treated as though they are within the boundaries of the city for purposes of city sales and use tax.

(B) Counties, transit authorities, and special purpose districts may not enter into strategic partnership agreements. Sales and use taxes imposed by those taxing jurisdictions do not apply in the limited-purpose annexed area as part of a strategic partnership agreement between a city and an authorized district. However, a county, special purpose district, or transit authority sales and use tax, or any combination of these three types of taxes, may apply at locations included in a strategic partnership agreement between a city and an authorized district if the tax is imposed in that area by the applicable jurisdiction as allowed under its own controlling authorities.

(C) Prior to September 1, 2011, the term "district" was defined in Local Government Code, §43.0751 as a municipal utility district or a water control and improvement district. The definition was amended effective September 1, 2011, to mean a conservation and reclamation district operating under Water Code, Chapter 49.

(e) Place of business - special definitions. In addition to the general definition of the term "place of business" in subsection (a)(14) of this section, the following rules apply.

(1) Administrative offices supporting traveling salespersons. Any outlet, office, or location operated by a seller that serves as a base of operations for a traveling salesperson or that provides administrative support to a traveling salesperson is a place of business.

(2) Distribution centers, manufacturing plants, storage yards, warehouses, and similar facilities.

(A) A distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller at which the seller receives three or more orders for taxable items during the calendar year is a place of business.

(B) If a salesperson who receives three or more orders for taxable items within a calendar year is assigned to work from, or to work at, a distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller, then the facility is a place of business.

(C) If a location that is a place of business of the seller, such as a sales office, is in the same building as a distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller, then the entire facility is a place of business of the seller.

(3) Kiosks. A kiosk is not a place of business for the purpose of determining where a sale is consummated for local tax purposes. A seller who owns or operates a kiosk in Texas is, however, engaged in business in this state as provided in §3.286 of this title.

(4) Purchasing offices.

(A) A purchasing office is not a place of business if the purchasing office exists solely to rebate a portion of the local sales and use tax imposed by Tax Code, Chapter 321 or 323 to a business with which it contracts; or if the purchasing office functions or exists to avoid the tax legally due under Tax Code, Chapter 321 or 323. A purchasing office does not exist solely to rebate a portion of the local sales and use tax or to avoid the tax legally due under Tax Code, Chapter 321 or 323 if the purchasing office provides significant business services, beyond processing invoices, to the contracting business, including logistics management, purchasing, inventory control, or other vital business services.

(B) When the comptroller determines that a purchasing office is not a place of business, the sale of any taxable item is deemed to be consummated at the place of business of the seller from whom the purchasing office purchased the taxable item for resale and local sales and use taxes are due according to the following rules.

(i) When taxable items are purchased from a Texas seller, local sales taxes are due based on the location of the seller's place

of business where the sale is deemed to be consummated, as determined in accordance with subsection (h) of this section.

(ii) When the sale of a taxable item is deemed to be consummated at a location outside of this state, local use tax is due based on the location where the items are first stored, used or consumed by the entity that contracted with the purchasing office in accordance with subsection (i) of this section.

(C) In making a determination under subparagraph (A) of this paragraph, as to whether a purchasing office provides significant business services to the contracting business, the comptroller will look to the books and records of the purchasing office to determine whether the total value of the business services provided to the contracting business equals or exceeds the total value of processing invoices. If the total value of the business services provided, including logistics management, purchasing, inventory control, or other vital business services, is less than the total value of the service to process invoices, then the purchasing office will be presumed not to be a place of business of the seller.

(f) Places of business and job sites crossed by local taxing jurisdiction boundaries.

(1) Places of business crossed by local taxing jurisdiction boundaries. If a place of business is crossed by one or more local taxing jurisdiction boundaries so that a portion of the place of business is located within a taxing jurisdiction and the remainder of the place of business lies outside of the taxing jurisdiction, tax is due to the local taxing jurisdictions in which the sales office is located. If there is no sales office, sales tax is due to the local taxing jurisdictions in which any cash registers are located.

(2) Job sites.

(A) Residential repair and remodeling; new construction of an improvement to realty. When a contractor is improving real property under a separated contract, and the job site is crossed by the boundaries of one or more local taxing jurisdictions, the local taxes due on any separately stated charges for taxable items incorporated into the real property must be allocated to the local taxing jurisdictions based on the total square footage of the real property improvement located within each jurisdiction, including the square footage of any standalone structures that are part of the construction, repair, or remodeling project. For more information about tax due on materials used at residential and new construction job sites, refer to §3.291 of this title (relating to Contractors).

(B) Nonresidential real property repair and improvement. When taxable services are performed to repair, remodel, or restore nonresidential real property, including a pipeline, transmission line, or parking lot, that is crossed by the boundaries of one or more local taxing jurisdictions, the local taxes due on the taxable services, including materials and any other charges connected to the services performed, must be allocated among the local taxing jurisdictions based upon the total mileage or square footage, as appropriate, of the repair, remodeling, or restoration project located in each jurisdiction. For more information about tax due on materials used at nonresidential real property repair and remodeling job sites, refer to §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance).

(g) Sellers' and purchasers' responsibilities for collecting or accruing local taxes.

(1) Sale consummated in Texas; seller responsible for collecting local sales taxes and applicable local use taxes. When a sale of a taxable item is consummated at a location in Texas as provided by subsection (h) of this section, the seller must collect each local sales tax in effect at the location except as provided in paragraph (3) of this subsection. If the total rate of local sales tax due on the sale does not reach the two percent cap, and the seller ships or delivers the item into another local taxing jurisdiction in which the seller is engaged in business, then the seller is required to collect additional local use taxes due, if any, based on the location to which the item is shipped or delivered. For more information regarding local use taxes, refer to subsection (i) of this section.

(2) Out-of-state sale; seller engaged in business in Texas. A seller who is engaged in business in this state is required to collect and remit local use taxes due, if any, on orders of taxable items shipped or delivered at the direction of the purchaser into a local taxing jurisdiction in this state in which the seller is engaged in business.

(3) A seller is only required to collect local sales or use taxes for a local taxing jurisdiction in which the seller is engaged in business.

(4) Purchaser responsible for accruing and remitting local taxes if seller fails to collect.

(A) If a seller does not collect the state sales tax, any applicable local sales taxes, or both on a sale of a taxable item that is consummated in Texas, then the purchaser is responsible for filing a return and paying the tax. The local sales taxes due are based on the location in this state where the sale is consummated as provided in subsection (h) of this section.

(B) A purchaser who buys an item for use in Texas from a seller who does not collect the state use tax, any applicable local use taxes, or both, is responsible for filing a return and paying the tax. The local use taxes due are based on the location where the item is first stored, used, or consumed by the purchaser.

(C) For more information about how to report and pay use tax directly to the comptroller, see §3.286 of this title.

(5) Local tax is due on the sales price of a taxable item, as defined in Tax Code, §151.007, in the report period in which the taxable item is purchased or the period in which the taxable item is first stored, used, or otherwise consumed in a local taxing jurisdiction.

(h) Local sales tax. Determining the local taxing jurisdictions to which sales tax is due; consummation of sale.

(1) General rule. Except for the special rules applicable to direct payment permit purchases and certain taxable items as provided in subsections (j) and (k) of this section, each sale of a taxable item is consummated at the location indicated by the provisions of this subsection. Local sales taxes are due to each local taxing jurisdiction in effect at the location where the sale is consummated. Local use tax may also be due if the total amount of local sales taxes due does not reach the two percent cap, and the item purchased is shipped or delivered to a location in one or more different local taxing jurisdictions, as provided in subsection (i) of this section.

(2) Multiple special purpose district taxes, multiple transit authority sales taxes, or a combination of the two may apply to a single transaction. If the sale of a taxable item is consummated at a location within the boundaries of multiple special purpose districts or transit authorities, local sales tax is owed to each of the jurisdictions in effect at that location. For example, a place of business located in the city of San Antonio is within the boundaries of both the San Antonio Advanced Transportation District and the San Antonio Metropolitan Transit Authority, and the seller is required to collect sales tax for both transit authorities. Similarly, a place of business in Flower Mound is located within the boundaries of two special purpose districts, the Flower Mound Crime Control District and the Flower Mound Fire Control Dis-

trict, and the seller is responsible for collecting sales tax for both special purpose districts.

(3) Consummation of sale. The following rules, taken from Tax Code, §321.203 and §323.203, apply to all sellers engaged in business in this state, regardless of whether they have a place of business in Texas or multiple places of business in the state.

(A) Order placed in person at a seller's place of business in Texas. When a purchaser places an order for a taxable item in person at a seller's place of business in Texas, the sale of that item is consummated at that place of business, regardless of the location where the order is fulfilled, except in the limited circumstances described in subparagraph (F) of this paragraph, concerning qualifying economic development agreements.

(B) Order received at a place of business in Texas, fulfilled at a location that is not a place of business. When an order that is placed over the telephone, through the Internet, or by any means other than in person is received by the seller at a place of business in Texas, and the seller fulfills the order at a location that is not a place of business of the seller in Texas, such as a warehouse or distribution center, the sale is consummated at the place of business at which the order for the taxable item is received.

(C) Order fulfilled at a place of business in Texas. When an order is placed in person at a location that is not a place of business of the seller in this state, such as a kiosk, or when an order is placed over the telephone, through the Internet, or by any means other than in person, and the seller fulfills the order at a location that is a place of business in Texas, the sale is consummated at the place of business where the order is fulfilled.

(D) Order fulfilled within the state at a location that is not a place of business. When an order is received by a seller at any location other than a place of business of the seller in this state, and the seller fulfills the order at a location in Texas that is not a place of business of the seller, then the sale is consummated at the location in Texas to which the order is shipped or delivered, or the location where it is transferred to the purchaser.

(E) Order received outside of the state, fulfilled outside of the state. When an order is received by a seller at a location outside of Texas, and the order is shipped or delivered into a local taxing jurisdiction from a location outside of the state, the sale is not consummated at a location in Texas. However, local use tax is due based upon the location in this state to which the item is shipped or delivered or at which possession of the item is taken by the purchaser as provided in subsection (i) of this section.

(F) Exception for qualifying economic development agreements entered into before January 1, 2009, pursuant to Tax Code, §321.203(c-4) - (c-5) or §323.203(c-4) - (c-5). This subparagraph is effective until September 1, 2024. If applicable, the local sales tax due on the sale of a taxable item is based on the location of the qualifying warehouse, which is a place of business of the seller, from which the item is shipped or delivered or at which the purchaser takes possession of the item.

(4) Orders received by traveling salespersons. Orders taken by traveling salespersons are received by the seller at the administrative office or other place of business from which the traveling salesperson operates, and such sales are consummated at the location indicated in paragraph (3) of this subsection. For example, if a traveling salesperson who operates out of a place of business of a seller in Texas takes an order for a taxable item, and the order is fulfilled at a location that is not a place of business of the seller in this state, the sale is consummated at the place of business from which the salesperson operates, in accordance with paragraph (3)(B) of this subsection. Similarly, if a traveling salesperson takes an order for a taxable item, and the order is fulfilled at a place of business of the seller in this state, the sale is consummated at the location of the place of business where the order is fulfilled, in accordance with paragraph (3)(C) of this subsection.

(5) Drop shipments.

(A) When an order for a taxable item is received at a seller's place of business in Texas, or by a traveling salesperson operating out of a place of business in this state, and the item is drop-shipped directly to the purchaser from a third-party supplier, the sale is consummated at, and local sales tax is due based upon, the location of the place of business where the order is received. When an order for a taxable item is received by a seller at one location, but shipped by the seller to the purchaser from a different location, the sale is consummated at, and local sales tax is due based upon, the location designated in paragraph (3) of this subsection. If the local sales taxes due based on the location of the seller's place of business at which the sale is consummated equal less than 2.0%, additional local use tax may be due based upon the location in this state to which the purchased item is shipped or delivered or at which possession of the item is taken by the purchaser as provided in subsection (i) of this section.

(B) When an order for a taxable item is received by the seller at a location outside of Texas, or by a traveling salesperson operating from a location outside of this state, and the item is drop-shipped directly to the purchaser from a third-party supplier, the item is subject to use tax. See subsection (i) of this section concerning use tax.

(6) Itinerant vendors; vending machines; temporary places of business.

(A) Itinerant vendors. Sales made by itinerant vendors are consummated at, and itinerant vendors must collect sales tax based upon, the location where the item is delivered or where the purchaser takes possession of the item. Itinerant vendors do not have any responsibility to collect use tax.

(B) Vending machines. Sales of taxable items made from a vending machine are consummated at the location of the vending machine. See §3.293 of this title (relating to Food; Food Products; Meals; Food Service) for more information about vending machine sales.

(C) Temporary places of business.

(i) Item transferred to purchaser at time of sale. When a seller operates a temporary place of business, and items purchased are transferred to the purchasers at the time of sale, the sales are consummated at, and local sales tax is due based upon, the location of the temporary place of business.

(ii) Order accepted at temporary place of business prior to June 19, 2009. If a seller received an order at a temporary place of business prior to June 19, 2009, and the order was fulfilled at another place of business of the seller in this state, the sale was consummated at, and local sales taxes are due based upon, the location of the place of business where the order was fulfilled and not the temporary location where the order was received.

(iii) Order accepted at temporary place of business on or after June 19, 2009. When a seller receives an order in person at a temporary place of business and the order is fulfilled at another location, the sale is consummated at, and local sales taxes are due based upon, the location of the temporary place of business where the order was received.

(i) Use tax. The provisions addressing the imposition of state use tax in §3.346 of this title also apply to the imposition of local use tax. For example, consistent with §3.346(e) of this title, all taxable items that are shipped or delivered to a location in this state that is within the boundaries of a local taxing jurisdiction are presumed to have been purchased for use in that local taxing jurisdiction as well as presumed to have been purchased for use in the state.

(1) General rules.

(A) When local use taxes are due in addition to local sales taxes as provided by subsection (h) of this section, all applicable use taxes must be collected or accrued in the following order until the two percent cap is reached: city, county, special purpose district, and transit authority. If more than one special purpose district use tax is due, all such taxes are to be collected or accrued before any transit authority use tax is collected or accrued. See subparagraphs (D) and (E) of this paragraph.

(B) If a local use tax cannot be collected or accrued at its full rate without exceeding the two percent cap, the seller cannot collect it, or any portion of it, and the purchaser is not responsible for accruing it.

(C) If a seller collects a local sales tax on an item, or a purchaser accrues a local sales tax on an item, a use tax for the same type of jurisdiction is not due on the same item. For example, once a city sales tax has been collected or accrued for an item, no use tax is due to that same or a different city on that item, but use tax may be due to a county, special purpose district, or transit authority. Similarly, if one or more special purpose district sales taxes have been collected or accrued for an item, no special purpose district use tax is due on that item, and if one or more transit authority sales taxes have been collected or accrued for an item, no transit authority use tax is due on that item.

(D) Collection or accrual of use tax for multiple special purpose districts. If more than one special purpose district use tax is in effect at the location where use of an item occurs, the special purpose district taxes are due in the order of their effective dates, beginning with the earliest effective date, until the two percent cap is met. The effective dates of all special purpose district taxes are available on the comptroller's website. However, if the collection or accrual of use tax for the district with the earliest effective date would exceed the two percent cap, the tax for that district is not due and the seller or purchaser should determine, following the criteria in subparagraphs (A) - (C) of this paragraph, whether use tax is due for the district that next became effective.

(i) If the competing special purpose districts became effective on the same date, the special purpose district taxes are due in the order of the earliest date for which the election in which the district residents authorized the imposition of sales and use tax by the district was held.

(ii) If the elections to impose the local taxes were held on the same date, the special purpose district taxes are due in the order of the earliest date for which the enabling legislation under which each district was created became effective.

(E) Collection or accrual of use tax for multiple transit authorities. If more than one transit authority use tax is in effect at the location where use of an item occurs, and the two percent cap has not been met, the transit authority taxes are due in the order of their effective dates, beginning with the earliest effective date, until the two percent cap is met. The effective dates of all transit authority taxes are available on the comptroller's website. However, if the collection or accrual of use tax for the authority with the earliest effective date would exceed the two percent cap, the tax for that authority is not due and the seller or purchaser should determine, following the criteria in subparagraphs (A) - (D) of this paragraph, whether use tax is due for the authority that next became effective.

(i) If the competing transit authorities became effective on the same date, the transit authority taxes are due in the order of the earliest date for which the election in which the authority residents authorized the imposition of sales and use tax by the authority was held.

(ii) If the elections to impose local taxes were held on the same date, the transit authority use taxes are due in the order of the earliest date for which the enabling legislation under which each authority was created became effective.

(2) General use tax rules applied to specific situations. The following fact patterns explain how local use tax is to be collected or accrued and remitted to the comptroller based on, and subject to, the general rules in paragraph (1) of this subsection.

(A) Sale consummated outside the state, item delivered from outside the state or from a location in Texas that is not operated by the seller - local use tax due. If a sale is consummated outside of this state according to the provisions of subsection (h) of this section, and the item purchased is either shipped or delivered to a location in this state as designated by the purchaser from a location outside of the state, or if the order is drop shipped directly to the purchaser from a third-party supplier, local use tax is owed based upon the location in this state to which the order is shipped or delivered. If the seller is engaged in business in the local taxing jurisdiction into which the order is shipped or delivered, the seller is responsible for collecting the local use tax due on the sale. If the seller does not collect the local use taxes due on the sale, the purchaser is responsible for accruing such taxes and remitting them directly to the comptroller according to the provisions in paragraph (1) of this subsection. For example, if an order for a taxable item is received by a seller at a location outside of Texas, and the order is shipped to the purchaser from a location outside of the state, local use tax is due based upon the location to which the order is shipped or delivered.

(B) Sale consummated in Texas outside a local taxing jurisdiction, item delivered into one or more local taxing jurisdictions - local use tax due. If a sale is consummated at a location in Texas that is outside of the boundaries of any local taxing jurisdiction according to the provisions of subsection (h) of this section, and the order is shipped or delivered to the purchaser at a location in this state that is within the boundaries of one or more local taxing jurisdictions, local use tax is due based on the location to which the items are shipped or delivered. If the seller is engaged in business in the local taxing jurisdiction where the items are shipped or delivered, the seller is responsible for collecting the local use taxes due. If the seller fails to collect any local use taxes due, the purchaser is responsible for accruing such taxes and remitting them directly to the comptroller. For example, if a seller uses its own delivery vehicle to transport a taxable item from a place of business that is outside the boundaries of a local taxing jurisdiction to a delivery location designated by a purchaser that is inside the boundaries of a local taxing jurisdiction, the seller is responsible for collecting the local use taxes due based on the location to which the items are delivered.

(C) Sale consummated in any local taxing jurisdictions imposing less than 2.0% in total local taxes - local sales taxes, and possibly use taxes, due. If a sale is consummated at a location in Texas where the total local sales tax rate imposed by the taxing jurisdictions in effect at that location does not equal or exceed 2.0% according to the provisions of subsection (h) of this section, and the item is shipped or delivered to the purchaser at a location in this state that is inside the boundaries of a different local taxing jurisdiction, additional local use tax may be due based on the location to which the order is shipped or

delivered, subject to the two percent cap. If the seller is engaged in business in the local taxing jurisdiction into which the order is shipped or delivered, the seller is responsible for collecting any additional local use taxes due. See subsection (g) of this section. If the seller fails to collect the additional local use taxes due, the purchaser is responsible for accruing such taxes and remitting them directly to the comptroller. For example, if an order is received in person at a place of business of the seller, such that the sale is consummated at the location where the order is received as provided under subsection (h)(3)(A) of this section, and the local sales tax due on the sale does not meet the two percent cap, additional local use taxes may be due based on the location to which the order is shipped or delivered, subject to the provisions in paragraph (1) of this subsection. Or, if a purchaser places an order for a taxable item at a seller's place of business in Texas, and the seller ships or delivers the item from an out-of-state location to a location in this state as designated by the purchaser, local sales tax is due based upon the location of the place of business where the order is received. If the local sales tax due on the item does not meet the two percent cap, use tax, subject to the provisions in paragraph (1) of this subsection, is due based upon the location where the items are shipped or delivered.

(j) Items purchased under a direct payment permit.

(1) When taxable items are purchased under a direct payment permit, local use tax is due based upon the location where the permit holder first stores the taxable items, except that if the taxable items are not stored, then local use tax is due based upon the location where the taxable items are first used or otherwise consumed by the permit holder.

(2) If, in a local taxing jurisdiction, storage facilities contain taxable items purchased under a direct payment exemption certificate and at the time of storage it is not known whether the taxable items will be used in Texas, then the taxpayer may elect to report the use tax either when the taxable items are first stored in Texas or are first removed from inventory for use in Texas, as long as use tax is reported in a consistent manner. See also §3.288(i) of this title (relating to Direct Payment Procedures and Qualifications) and §3.346(g) of this title.

(3) If local use tax is paid on stored items that are subsequently removed from Texas before they are used, the tax may be recovered in accordance with the refund and credit provisions of §3.325 of this title (relating to Refunds and Payments Under Protest) and §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers).

(k) Special rules for certain taxable goods and services. Sales of the following taxable goods and services are consummated at, and local tax is due based upon, the location indicated in this subsection.

(1) Amusement services. Local tax is due based upon the location where the performance or event occurs. For more information on amusement services, refer to §3.298 of this title (relating to Amusement Services).

(2) Cable services. When a service provider uses a cable system to provide cable television or bundled cable services to customers, local tax is due as provided for in §3.313 of this title. When a service provider uses a satellite system to provide cable services to customers, no local tax is due on the service in accordance with the Telecommunications Act of 1996, §602.

(3) Florists. Local sales tax is due on all taxable items sold by a florist based upon the location where the order is received, regardless of where or by whom delivery is made. Local use tax is not due on deliveries of taxable items sold by florists. For example, if the place of business of the florist where an order is taken is not within the boundaries of any local taxing jurisdiction, no local sales tax is due on the item and no local use tax is due regardless of the location of delivery. If a Texas florist delivers an order in a local taxing jurisdiction at the instruction of an unrelated florist, and if the unrelated florist did not take the order within the boundaries of a local taxing jurisdiction, local use tax is not due on the delivery. For more information about florists' sales and use tax obligations, refer to §3.307 of this title (relating to Florists).

(4) Landline telecommunications services. Local taxes due on landline telecommunications services are based upon the location of the device from which the call or other transmission originates. If the seller cannot determine where the call or transmission originates, local taxes due are based on the address to which the service is billed. For more information, refer to §3.344 of this title (relating to Telecommunications Services).

(5) Mobile telecommunications services. Local taxes due on mobile telecommunications services are based upon the location of the customer's place of primary use as defined in §3.344(a)(8) of this title, and local taxes are to be collected as indicated in §3.344(h) of this title.

(6) Motor vehicle parking and storage. Local taxes are due based on the location of the space or facility where the vehicle is parked. For more information, refer to §3.315 of this title (relating to Motor Vehicle Parking and Storage).

(7) Natural gas and electricity. Any local city and special purpose taxes due are based upon the location where the natural gas or electricity is delivered to the purchaser. As explained in subsection (l)(1) of this section, residential use of natural gas and electricity is exempt from all county sales and use taxes and all transit authority sales and use taxes, most special purpose district sales and use taxes, and many city sales and use taxes. A list of the cities and special purpose districts that do impose, and those that are eligible to impose, local sales and use tax on residential use of natural gas and electricity is available on the comptroller's website. For more information, also refer to §3.295 of this title (relating to Natural Gas and Electricity).

(8) Nonresidential real property repair and remodeling services. Local taxes are due on services to remodel, repair, or restore nonresidential real property based on the location of the job site where the remodeling, repair, or restoration is performed. See also subsection (f)(2)(B) of this section and §3.357 of this title.

(9) Residential real property repair and remodeling and new construction of a real property improvement performed under a separated contract. When a contractor constructs a new improvement to realty pursuant to a separated contract or improves residential real property pursuant to a separated contract, the sale is consummated at the job site at which the contractor incorporates taxable items into the customer's real property. See also subsection (f)(2)(A) of this section and §3.291 of this title.

(10) Waste collection services. Local taxes are due on garbage or other solid waste collection or removal services based on the location at which the waste is collected or from which the waste is removed. For more information, refer to §3.356 of this title (relating to Real Property Service).

(l) Special exemptions and provisions applicable to individual jurisdictions.

(1) Residential use of natural gas and electricity.

(A) Mandatory exemptions from local sales and use tax. Residential use of natural gas and electricity is exempt from most local sales and use taxes. Counties, transit authorities, and most special purpose districts are not authorized to impose sales and use tax on the

residential use of natural gas and electricity. Pursuant to Tax Code, §321.105, any city that adopted a local sales and use tax effective October 1, 1979, or later is prohibited from imposing tax on the residential use of natural gas and electricity. See §3.295 of this title.

(B) Imposition of tax allowed in certain cities. Cities that adopted local sales tax prior to October 1, 1979, may, in accordance with the provisions in Tax Code, §321.105, choose to repeal the exemption for residential use of natural gas and electricity. The comptroller's website provides a list of cities that impose tax on the residential use of natural gas and electricity, as well as a list of those cities that do not currently impose the tax, but are eligible to do so.

(C) Effective January 1, 2010, a fire control, prevention, and emergency medical services district organized under Local Government Code, Chapter 344 that imposes sales tax under Tax Code, §321.106, or a crime control and prevention district organized under Local Government Code, Chapter 363 that imposes sales tax under Tax Code, §321.108, that is located in all or part of a municipality that imposes a tax on the residential use of natural gas and electricity as provided under Tax Code, §321.105 may impose tax on residential use of natural gas and electricity at locations within the district. A list of the special purpose districts that impose tax on residential use of natural gas and electricity and those districts eligible to impose the tax that do not currently do so is available on the comptroller's website.

(2) Telecommunication services. Telecommunications services are exempt from all local sales taxes unless the governing body of a city, county, transit authority, or special purpose district votes to impose sales tax on these services. However, since 1999, under Tax Code, §322.109(d), transit authorities created under Transportation Code, Chapter 451 cannot repeal the exemption unless the repeal is first approved by the governing body of each city that created the local taxing jurisdiction. The local sales tax is limited to telecommunications services occurring between locations within Texas. See §3.344 of this title. The comptroller's website provides a list of local taxing jurisdictions that impose tax on telecommunications services.

(3) Emergency services districts.

(A) Authority to exclude territory from imposition of emergency services district sales and use tax. Pursuant to the provisions of Health and Safety Code, §775.0751(c-1), an emergency services district wishing to enact a sales and use tax may exclude from the election called to authorize the tax any territory in the district where the sales and use tax is then at 2.0%. The tax, if authorized by the voters eligible to vote on the enactment of the tax, then applies only in the portions of the district included in the election. The tax does not apply to sales made in the excluded territories in the district and sellers in the excluded territories should continue to collect local sales and use taxes for the local taxing jurisdictions in effect at the time of the election under which the district sales and use tax was authorized as applicable.

(B) Consolidation of districts resulting in sales tax sub-districts. Pursuant to the provisions of Health and Safety Code, §775.018(f), if the territory of a district proposed under Health and Safety Code, Chapter 775 overlaps with the boundaries of another district created under that chapter, the commissioners court of each county and boards of the counties in which the districts are located may choose to create a consolidated district in the overlapping territory. If two districts that want to consolidate under Health and Safety Code, §775.024 have different sales and use tax rates, the territory of the former districts located within the consolidated area will be designated as sub-districts and the sales tax rate within each sub-district will continue to be imposed at the rate the tax was imposed by the former district that each sub-district was part of prior to the consolidation.

(4) East Aldine Management District.

(A) Special sales and use tax zones within district; separate sales and use tax rate. As set out in Special District Local Laws Code, §3817.154(e) and (f), the East Aldine Management District board may create special sales and use tax zones within the boundaries of the District and, with voter approval, enact a special sales and use tax rate in each zone that is different from the sales and use tax rate imposed in the rest of the district.

(B) Exemptions from special zone sales and use tax. The sale, production, distribution, lease, or rental of; and the use, storage, or other consumption within a special sales and use tax zone of; a taxable item sold, leased, or rented by the entities identified in clauses (i) - (vi) of this subparagraph are exempt from the special zone sales and use tax. State and all other applicable local taxes apply unless otherwise exempted by law. The special zone sales and use tax exemption applies to:

(i) a retail electric provider as defined by Utilities Code, §31.002;

(ii) an electric utility or a power generation company as defined by Utilities Code, §31.002;

(iii) a gas utility as defined by Utilities Code, §101.003 or §121.001, or a person who owns pipelines used for transportation or sale of oil or gas or a product or constituent of oil or gas;

(iv) a person who owns pipelines used for the transportation or sale of carbon dioxide;

(v) a telecommunications provider as defined by Utilities Code, §51.002; or

(vi) a cable service provider or video service provider as defined by Utilities Code, §66.002.

(5) Imposition of city sales tax and transit tax on certain military installations; El Paso and Fort Bliss. Pursuant to Tax Code, §321.1045 (Imposition of Sales and Use Tax in Certain Federal Military Installations), for purposes of the local sales and use tax imposed under Tax Code, Chapter 321, the city of El Paso includes the area within the boundaries of Fort Bliss to the extent it is in the city's extraterritorial jurisdiction. However, the El Paso transit authority does not include Fort Bliss. See Transportation Code, §453.051 concerning the Creation of Transit Departments.

(m) Restrictions on local sales tax rebates and other economic incentives. Pursuant to Local Government Code, §501.161, Section 4A and 4B development corporations may not offer to provide economic incentives, such as local sales tax rebates authorized under Local Government Code, Chapters 380 or 381, to persons whose business consists primarily of purchasing taxable items using resale certificates and then reselling those same items to a related party. A related party means a person or entity which owns at least 80% of the business enterprise to which sales and use taxes would be rebated as part of an economic incentive.

(n) Prior contract exemptions. The provisions of §3.319 of this title (relating to Prior Contracts) concerning definitions and exclusions apply to prior contract exemptions.

(1) Certain contracts and bids exempt. No local taxes are due on the sale, use, storage, or other consumption in this state of taxable items used:

(A) for the performance of a written contract executed prior to the effective date of any local tax if the contract may not be modified because of the tax; or

(B) pursuant to the obligation of a bid or bids submitted prior to the effective date of any local tax if the bid or bids and contract entered into pursuant thereto are at a fixed price and not subject to withdrawal, change, or modification because of the tax.

(2) Annexations. Any annexation of territory into an existing local taxing jurisdiction is also a basis for claiming the exemption provided by this subsection.

(3) Local taxing jurisdiction rate increase; partial exemption for certain contracts and bids. When an existing local taxing jurisdiction raises its sales and use tax rate, the additional amount of tax that would be due as a result of the rate increase is not due on the sale, use, storage, or other consumption in this state of taxable items used:

(A) for the performance of a written contract executed prior to the effective date of the tax rate increase if the contract may not be modified because of the tax; or

(B) pursuant to the obligation of a bid or bids submitted prior to the effective date of the tax rate increase if the bid or bids and contract entered into pursuant thereto are at a fixed price and not subject to withdrawal, change, or modification because of the tax.

(4) Three-year statute of limitations.

(A) The exemption in paragraph (1) of this subsection and the partial exemption in paragraph (3) of this subsection have no effect after three years from the date the adoption or increase of the tax takes effect in the local taxing jurisdiction.

(B) The provisions of §3.319 of this title apply to this subsection to the extent they are consistent.

(C) Leases. Any renewal or exercise of an option to extend the time of a lease or rental contract under the exemptions provided by this subsection shall be deemed to be a new contract and no exemption will apply.

(5) Records. Persons claiming the exemption provided by this subsection must maintain records which can be verified by the comptroller or the exemption will be lost.

(6) Exemption certificate. An identification number is required on the prior contract exemption certificates furnished to sellers. The identification number should be the person's 11-digit Texas taxpayer number or federal employer's identification (FEI) number.

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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Lita Gonzalez
General Counsel
Comptroller of Public Accounts
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CHAPTER 19. STATE ENERGY CONSERVATION OFFICE

SUBCHAPTER E. TEXAS BUILDING ENERGY PERFORMANCE STANDARDS

34 TAC §19.52, §19.53

The Comptroller of Public Accounts adopts amendments to §19.52, concerning public comment on building energy efficiency performance standards, without changes to the proposed text as published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6881) and §19.53, concerning building energy efficiency performance standards, with changes to the proposed text as published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6881).

The amendment to §19.52 updates the public comment period and process to implement the changes made to Health and Safety Code, §388.003 by House Bill 1736, 84th Legislature, 2015.

The amendment to §19.53 updates the energy codes for residential and commercial construction in accordance with the changes made to Health and Safety Code, §388.003 in House Bill 1736, 84th Legislature, 2015. The energy efficiency chapter of the International Residential Code, as it existed on May 1, 2015, was specifically designated by the legislature in House Bill 1736 as the state energy code for single-family residential construction, effective September 1, 2016. The International Energy Conservation Code, as it existed on May 1, 2015, is adopted as the state energy code for all other residential, commercial, and industrial construction, effective November 1, 2016, based on public comment and stringency findings of the Energy Systems Laboratory, as required by Health and Safety Code, Chapter 388.

Ten comments were received regarding these amendments.

Mr. Ned Muñoz with the Texas Association of Builders requested clarification "be made to the proposed rules to reflect the Energy Rating Index Compliance Alternative (or subsequent alternative compliance path) scores as added to state statutes by §388.003(i) and (j) under HB 1736." The comptroller agrees with this comment. In response, the phrase, "and as supplemented by Health and Safety Code, §388.003(i) and (j)," has been added to §19.53(a) to make the rule more consistent with the provisions of House Bill 1736.

Mr. Cyrus Reed with the Sierra Club, Lone Star Chapter, expressed support for the proposed rules and forwarded a petition signed by 1,011 people who support the adoption of the 2015 energy codes in Texas. He asked that the State Energy Conservation Office (SECO) provide training for builders, inspectors, architects and city officials regarding the proposed rules, and provide guidance on its website about alternative compliance paths and potential local amendments, including solar-ready provisions. In response to Mr. Reed's comment, SECO will provide training on the new standards and guidance to local jurisdictions regarding alternative compliance paths and optional amendments. SECO training will focus first on the long term, durable benefits of energy efficient construction, which can then be supplemented by any on-site power production.

Ms. Deborah Bliss, Mr. Raymond T. Mudehwe, Mr. Richard Howe and Mr. Chadd Jones provided substantially similar comments, requesting the inclusion of the 2015 International Residential Code (IRC) Appendix U Solar Ready Provisions in §19.53. In response to these comments, the comptroller states that, for single family construction, SECO's authority to adopt building energy performance standards, as established in the Health and Safety Code, §388.003, is limited to the energy

efficiency chapter (Chapter 11) of the IRC. Including Appendix U of the IRC in the rules is beyond SECO's authority, so no change has been made to the proposed amendments.

Mr. Rodney R. Ruebsahm submitted two articles on white roofs and their impact on energy and water conservation. He expressed concern that if not properly maintained, white roofs lose energy savings benefits and manufacturer warranties could be voided. Additionally, water used for white roof cleaning and disposal of that water may create operational challenges for building owners. In response to this comment, the comptroller agrees that, while the proposed amendments do not specifically address white roofs, proper maintenance, with responsible cleaning water usage and disposal, is essential to preserving the energy saving properties of white/reflective roofs. SECO will communicate this information in trainings for building owners and operators.

Mr. Eric Lacey with the Responsible Energy Codes Alliance (RECA) expressed support for "the adoption of the 2015 International Energy Conservation Code (IECC) with no weakening amendments" as well as "the incorporation of the provisions of the 2015 International Residential Code (IRC)" in accordance with House Bill 1736. Additionally, RECA recommended that SECO issue a clarification that solar photovoltaics (PV) and other sources of on-site power production cannot be substituted for energy conservation measures under the Energy Rating Index (ERI) compliance option in the IRC or IECC. In response to this comment, the comptroller states that, according to the Energy Systems Laboratory at Texas A&M University, the Residential provisions of the 2015 IRC/IECC do not include any definition or mention of on-site power production (solar or otherwise) as a substitute for energy conservation to meet the ERI maximum score. The language in the code that establishes the ERI Pathway addresses the use and conservation of energy, not the production of energy.

Mr. Doug Lewin with the South-central Partnership for Energy Efficiency as a Resource (SPEER) expressed support for the proposed amendments. No response to this comment is necessary.

Mr. Michael Power with the American Chemistry Council expressed support for "the adoption of the 2015 International Energy Conservation Code (IECC) with no weakening amendments" as well as "the incorporation of the provisions of the 2015 International Residential Code (IRC) in accordance with Texas HB 1736." No response to this comment is necessary.

The effective date in §19.53(b) has been changed from September 1, 2016 to November 1, 2016 for the adoption of the 2015 International Energy Conservation Code (IECC) as the energy code for all residential, commercial, and industrial construction that is not single-family residential construction. The effective date is being changed in the adopted text to comply with Health and Safety Code, §388.003(b), which requires that the effective date for an adopted edition of the IECC must not be earlier than nine months after the date of the administrative rule's adoption. The September 1, 2016 effective date for the adoption of the energy efficiency chapter of the 2015 International Residential Code as the energy code for all single-family residential construction is not being changed from the proposed text because its effective date is established by Health and Safety Code, §388.003(a).

The amendments are adopted under Health and Safety Code, §388.003, which authorizes the comptroller by rule to establish a procedure for interested persons to have an opportunity to comment on energy codes that are under consideration and to adopt energy codes, and establishes Texas building and performance standards.

The amendments implement Health and Safety Code, §388.003.

The amendments are adopted under Health and Safety Code, §388.003, which authorizes the comptroller by rule to establish a procedure for interested persons to have an opportunity to comment on energy codes that are under consideration and to adopt energy codes, and establishes Texas building and performance standards.

The amendments implement Health and Safety Code, §388.003.

§19.53. Building Energy Efficiency Performance Standards.

(a) Single-family residential construction. Effective September 1, 2016, the energy efficiency chapter of the International Residential Code, as it existed on May 1, 2015, and as supplemented by Health and Safety Code, §388.003(i) and (j), is adopted as the energy code in this state for single-family residential construction as it is defined in Health and Safety Code, §388.002(12).

(b) All other residential, commercial, and industrial construction. Effective November 1, 2016, the International Energy Conservation Code, as it existed on May 1, 2015, is adopted as the energy code for use in this state for all residential, commercial, and industrial construction that is not single-family residential construction under subsection (a) of 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 December 16, 2015.

TRD-201505679
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Effective date: January 5, 2016
Proposal publication date: October 2, 2015
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

CHAPTER 211. ADMINISTRATION

37 TAC §211.1

The Texas Commission on Law Enforcement (Commission) adopts the amended §211.1, concerning Definitions, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7576).

The amendment to 37 Texas Administrative Code §211.1, Definitions, makes background investigation a broader definition which encompasses not only pre-employment investigation, but pre-enrollment investigations, provides a definition for a contract jailer, removes redundant information, and defines honorably retired peace officer for clarification in response to legislation.

These amended and new definitions are necessary to clarify terminology.

One comment was received:

Suggest you define the term conviction/convicted to include deferred adjudication, probation or a fine and/or jail time consistent with the category of offense (i.e., class b misd....$2,000 fine and/or 6 months in county jail.) With the conviction definition you could include exclusions for pre-trial diversion or specific pardons or whatever exclusions you may wish to include. With one definition you then use convicted/conviction throughout without having to further define the term in each rule where it plays a part.

There were no changes due to public comments because under applicable statutes, the terms deferred adjudication and conviction are not synonymous. For the purpose of determining a licensee's regulatory liability for a misdemeanor criminal disposition, a conviction or deferred adjudication are treated the same. However, the two terms are not otherwise legally synonymous and cannot be defined as such under rule. Also, under current Commission definitions, pretrial diversions are expressly excluded from the definition of "conviction.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority.

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 December 14, 2015.

TRD-201505596
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

♦ ♦ ♦

37 TAC §211.5

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §211.5, concerning Licensee Lists, as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7579).

This repeal removes redundant information that is already stated in statute.

The repeal of this rule is necessary as is removes information that is already stated in statute.

No comments were received concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority and §1701.159, Active and Inactive Peace Officers.

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 December 14, 2015.

TRD-201505597
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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37 TAC §211.7

The Texas Commission on Law Enforcement (Commission) adopts the amended §211.7, concerning Meeting Dates and Procedures, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7579).

The amendment to 37 Texas Administrative Code §211.7, Meeting Dates and Procedures, gives the presiding officer more flexibility in scheduling meetings.

This amended rule is necessary to give the presiding officer more flexibility in scheduling meetings.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.058, Meetings.

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 December 14, 2015.

TRD-201505598
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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37 TAC §211.13

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §211.13, concerning Notice of Commission Rulemaking, as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7580).

Removal of this rule conforms with Texas Government Code §2001.028 and is being replaced by a new §211.13.

This repeal is necessary to conform with Texas Government Code §2001.028.

No comments were received concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code, §1701.151, General Powers of the Commission; Rulemaking

Authority, and Texas Government Code §2001.028, Notice of Proposed Law Enforcement 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.

Filed with the Office of the Secretary of State on December 14, 2015.

TRD-201505599
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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37 TAC §211.13

The Texas Commission on Law Enforcement (Commission) adopts new §211.13, concerning Notice of Commission Rulemaking, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7580).

The new 37 Texas Administrative Code §211.13, Notice of Commission Rulemaking, conforms with Texas Government Code §2001.028.

This new rule is necessary to conform with Texas Government Code §2001.028.

No comments were received regarding the adoption of this new rule.

The new rule is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and Texas Government Code §2001.028, Notice of Proposed Law Enforcement 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.

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 December 14, 2015.

TRD-201505600
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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37 TAC §211.16

The Texas Commission on Law Enforcement (Commission) adopts amended §211.16, concerning Establishment of an Appointing Entity, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7581).

The rule as currently written requires a law enforcement entity to provide the agency number when making application. This number is not issued until after the application has been approved. The current rule also references an incorrect section of the Local Government Code.

These amendments are necessary to correct the application requirements and to correct the reference to the Local Government Code.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.163, Information Provided by Commissioning Entities.

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

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 December 14, 2015.

TRD-201505601
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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37 TAC §211.25

The Texas Commission on Law Enforcement (Commission) adopts amended §211.25, concerning Date of Appointment, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7582).

This amendment adds telecommunicators to the list of licensees.

This amendment is necessary to add telecommunicators to the licensee list.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.152, Rules Relating to Hiring Date of Peace Officer, and §1701.405, Telecommunicators.

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 December 14, 2015.

TRD-201505602

Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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37 TAC §211.29

The Texas Commission on Law Enforcement (Commission) adopts amended §211.29, concerning Responsibilities of Agency Chief Administrators, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7582).

This amendment removes the cross-reference to Subchapter L of the Texas Occupations Code, Chapter 1701.

This amendment is necessary to simplify the rule should the statute change in the future.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; §1701.303, License Application; Duties of Appointing Entity; §1701.551, Criminal Penalty for Appointment or Retention of Certain Persons; §1701.552, Criminal Penalty for Appointment of Person Not Certified for Investigative Hypnosis; and §1701.553, Criminal Penalty for Appointment or Retention of Persons with Certain Convictions.

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 December 14, 2015.

TRD-201505603
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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37 TAC §211.35

The Texas Commission on Law Enforcement (Commission) adopts new §211.35, concerning Tuition Reimbursement for Commission Employees, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7583).

The new rule complies with HB 3337 (84R), a new legislative requirement for all state agencies concerning approval of tuition reimbursement.

This new rule is necessary to comply with HB 3337 (84R).

No comments were received regarding the adoption of this new rule.

The new rule is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; Texas Government Code §656.047, Payment of Program Expenses; and §656.048, Rules Related to Training and Education.

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 December 14, 2015.

TRD-201505604
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS

37 TAC §215.9

The Texas Commission on Law Enforcement (Commission) adopts amended §215.9, concerning Training Coordinator, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7584).

This amended rule creates additional options for posting of training calendars, defines minimum requirement of training files, and adds training files to the retention period.

This amended rule is necessary to define the posting of a training calendar and requirements of training files.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.251, Training Programs; Instructors.

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 December 14, 2015.

TRD-201505605
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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37 TAC §215.13

The Texas Commission on Law Enforcement (Commission) adopts amended §215.13, concerning Risk Assessment, with-

out changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7585).

The amended §215.13(a)(1), concerning Risk Assessment, contains redundant information.

This rule is necessary to remove redundant information.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.254, Risk Assessment and Inspections.

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 December 14, 2015.

TRD-201505606
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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CHAPTER 217. ENROLLMENT, LICENSING, APPOINTMENT, AND SEPARATION

37 TAC §217.1

The Texas Commission on Law Enforcement (Commission) adopts amended §217.1 concerning Minimum Standards for Enrollment and Initial Licensure, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7586).

This amendment raises the standards for licensure for offenses involving family violence. If the individual was convicted or placed on community supervision, then the individual is barred from licensure.

This amendment is necessary to raise the standards for licensure.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; §1701.251, Training Programs; Instructors; §1701.255, Enrollment Qualifications; §1701.307, Issuance of Officer or County Jailer License; §1701.3071, Issuance of Telecommunicator License; §1701.3075, Qualified Applicant Awaiting Appointment; §1701.310, Appointment of County Jailer; Training Required; §1701.311, Provisional License for Workforce Shortage; §1701.312, Disqualification: Felony Conviction or Placement on Community Supervision; and §1701.405, Telecommunicators.

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 December 14, 2015.

TRD-201505607
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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CHAPTER 218. CONTINUING EDUCATION

37 TAC §218.9

The Texas Commission on Law Enforcement (Commission) adopts amended §218.9, concerning Continuing Firearms Proficiency Requirements, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7588).

This amendment removes misnomer language. Subsection (f) reflects the effective date.

This amendment is necessary to remove the phrase "including at least five rounds of ammunition."

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; §1701.308, Weapons Proficiency; and §1701.355, Continuing Demonstration of Weapons Proficiency.

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 December 14, 2015.

TRD-201505608
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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37 TAC §218.11

The Texas Commission on Law Enforcement (Commission) adopts new §218.11, concerning Child Safety Check Alert List Training, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7589).

This new rule reflects legislative changes.

This new rule is necessary to reflect legislative changes from HB 2053 (84R).

No comments were received regarding the adoption of this new rule.

The new rule is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.262, Training Program Relating to Child Safety Check Alert List, as passed under HB 2053 (84R).

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 December 14, 2015.

TRD-201505609
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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CHAPTER 219. PRELICENSING, REACTIVATION, TESTS, AND ENDORSEMENTS

37 TAC §219.1

The Texas Commission on Law Enforcement (Commission) adopts amended §219.1, concerning Eligibility to Take State Examinations, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7590).

This amended rule clarifies the minimum enrollment and licensure language.

This amended rule is necessary to clarify language concerning enrollment and licensure.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.304, Examination.

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 December 14, 2015.

TRD-201505610
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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37 TAC §219.11

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §219.11, concerning Reactivation of a License, as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7591).

This repeal complies with HB 872 (84R). The old rule is replaced with new rule §219.11, published concurrently in this issue.

This repeal is necessary to comply with HB 872 (84R), which addresses reactivation requirements for individuals holding an inactive peace officer license. Due to the new requirements, a more streamlined rule was developed to ensure clarification of the reactivation process. The new rule also incorporates honorably retired reactivation.

No comments were received concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; §1701.316, Reactivation of Peace Officer License; and §1701.3161, Reactivation of Peace Officer License: Retired Peace Officers.

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 December 14, 2015.

TRD-201505611
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

♦ ♦ ♦

37 TAC §219.11

The Texas Commission on Law Enforcement (Commission) adopts new §219.11, concerning Reactivation of a License, with changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7591). The change to subsection (g) is necessary for grammatical correctness.

This new rule conforms to statutory amendments concerning the reactivation of a license.

This new rule is necessary to comply with HB 872 (84R) which addresses reactivation requirements for individuals holding an inactive peace officer license. Due to the new requirements, a more streamlined rule was developed to ensure clarification of the reactivation process. It also incorporates honorably retired reactivation.

One public comment was received.

It might be useful to define the "supplemental peace officer training course" or establish a set list of classes or topics that satisfies the goal you have in mind.

There were no changes due to public comments because the supplemental peace officer training course is its own curriculum.

The new rule is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; §1701.316, Reactivation of Peace Officer License;

and §1701.3161, Reactivation of Peace Officer License: Retired Peace Officers.

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 December 15, 2015.

TRD-201505650
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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37 TAC §219.13

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §219.13, concerning Retired Peace Officer Reactivation, as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7592).

The repealed section was consolidated into new rule §219.11.

This repeal is necessary to consolidate all reactivation processes into one rule.

No comments were received concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; §1701.316, Reactivation of Peace Officer License; and §1701.3161, Reactivation of Peace Officer License: Retired Peace Officers.

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 December 14, 2015.

TRD-201505612
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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CHAPTER 221. PROFICIENCY CERTIFICATES

37 TAC §221.3

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §221.3, concerning Peace Officer Proficiency, as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7594).

The repealed section is being replaced with new rule §221.3, which combines Peace Officer, Jailer, and Telecommunicator Proficiency Certificates into one rule.

This repeal is necessary to condense the Peace Officer, Jailer, and Telecommunicator Proficiency requirements into one rule.

No comments were received concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.402, Proficiency Certificates.

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 December 14, 2015.

TRD-201505613
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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37 TAC §221.3

The Texas Commission on Law Enforcement (Commission) adopts new §221.3, concerning Proficiency Certificates, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7594).

This new rule condenses the Peace Officer, Jailer, and Telecommunicator Proficiency requirements into one rule.

This new rule is necessary to condense the Peace Officer, Jailer, and Telecommunicator Proficiency requirements into one rule.

No comments were received regarding the adoption of this new rule.

The new rule is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; §1701.402, Proficiency Certificates; and §1701.405, Telecommunicators.

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 December 14, 2015.

TRD-201505614
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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37 TAC §221.5

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §221.5, concerning Jailer Proficiency, as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7595).

The repealed section was replaced with new rule §221.3, which combines Peace Officer, Jailer, and Telecommunicator Proficiency Certificates into one rule.

This repeal is necessary to condense the Peace Officer, Jailer, and Telecommunicator Proficiency requirements into one rule.

No comments were received concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.402, Proficiency Certificates.

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 December 14, 2015.

TRD-201505615
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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37 TAC §221.13

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §221.13, concerning Emergency Telecommunications Proficiency, as published in the October 30, 2015 issue of the *Texas Register* (40 TexReg 7595).

The repealed section was replaced with new rule §221.3, which combines Peace Officer, Jailer, and Telecommunicator Proficiency Certificates into one rule.

This repeal is necessary to condense the Peace Officer, Jailer, and Telecommunicator Proficiency requirements into one rule.

No comments were received concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.405, Telecommunicators.

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 December 14, 2015.

TRD-201505616
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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37 TAC §221.43

The Texas Commission on Law Enforcement (Commission) adopts new §221.43, concerning School-Based Law Enforcement Proficiency Certificate, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7596).

This new rule reflects legislative changes.

This new rule is necessary as it reflects legislative changes from HB 2684 (84R).

No comments were received regarding the adoption of this new rule.

The new rule is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; §1701.262, Training for School District Peace Officers and School Resource Officers, as passed by HB 2684 (84R); §1701.263, Education and Training Program for School District Peace Officers and School Resource Officers; and Texas Education Code §37.0812, Training Policy: School District Peace Officers and School Resource Officers.

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 December 14, 2015.

TRD-201505617
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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CHAPTER 223. ENFORCEMENT

37 TAC §223.1

The Texas Commission on Law Enforcement (Commission) adopts the amended §223.1, concerning License Action and Notification, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7596).

This amendment removes redundancies appearing in other existing rules and proposed amendments, removes unnecessary wording, adds the last known address provision, and provides more efficient and accurate notifications to licensees.

This amendment is necessary to remove the redundancy and to add provisions to provide more efficient and accurate notifications to licensees.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority.

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 December 14, 2015.

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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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37 TAC §223.3

The Texas Commission on Law Enforcement (Commission) adopts amended §223.3, concerning Answer Required, with changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7597).

This amended rule removes redundancies appearing in other existing rules and proposed amendments and removes unnecessary wording.

This amendment is necessary to remove redundancies appearing in other existing rules and proposed amendments and removes unnecessary wording.

One comment was received concerning this new rule.

Comment:

(a) Consider removing "...is provided with notice..." to "receives notice". This should work for the certified mailing as you have a receipt. You could also write in the rule a provision for first class mail that 5 days after mailing the recipient is deemed to have received the notice and the 20 days starts then unless returned as undeliverable.

The agency responded by removing the words "is provided with" in subsection (a) and replacing it with the word "receives."

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.505, Administrative Procedure.

§223.3. Answer Required.

(a) In order to preserve the right to a hearing as described under this subchapter, an answer must be filed not later than 20 days after the date the respondent receives notice of the executive director's petition or notice of violation. Failure to file a timely answer may result in the issuance of a default order.

(b) The answer may be in the form of a general denial as that term is used in the district courts of the State of Texas.

(c) The commission may grant the default order or refer the case to SOAH for a contested case hearing.

(d) If a person files a timely answer as required by this section, but fails to appear at the contested case hearing after receiving timely and adequate notice, the executive director may move for default judgment against the respondent as provided by SOAH rules.

(e) The effective date of this section is February 1, 2016.

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 December 14, 2015.

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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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37 TAC §223.5

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §223.5, concerning Filing of Documents, as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7598).

The repealed section is recodified into new rule §223.5.

This repeal is necessary to combine several rules into one to simplify the process.

No comments were received concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; §1701.505, Administrative Procedure; and Texas Government Code §2001.004, Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions.

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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Kim Vickers
Executive Director
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For further information, please call: (512) 936-7713

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37 TAC §223.5

The Texas Commission on Law Enforcement (Commission) adopts new §223.5, concerning Contested Cases and Hearings, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7598).

This new rule consolidates and recodifies contested case procedures.

This new rule is necessary to consolidate and recodify contested case procedures.

One public comment was received.

Comment:

(c) and (d) - Does a SOAH rule cover this? If not, is TCOLE provided a transcription of the SOAH hearing from SOAH? Is the transcript cost a charge imposed by TCOLE or a SOAH charge?

This is more of a question than a comment to stimulate a discussion on this issue. For your consideration.

There were no changes due to public comments.

The new rule is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; §1701.505, Administrative Procedure; and Texas Government Code §2001.004, Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions.

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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Kim Vickers
Executive Director
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For further information, please call: (512) 936-7713

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37 TAC §223.7

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §223.7, concerning Contested Cases and Hearings, as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7599).

The repeal is recodified into new rule §223.5.

This repeal is necessary to combine several rules into one to simplify the process.

No comments were received concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; §1701.505, Administrative Procedure, and Texas Government Code §2001.004, Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions.

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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Kim Vickers
Executive Director
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For further information, please call: (512) 936-7713

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37 TAC §223.9

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §223.9, concerning Place and Nature of Hearings, as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7599).

The repealed section is recodified into new rule §223.5.

This repeal is necessary to combine several rules into one to simplify the process.

No comments were received concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; §1701.505, Administrative Procedure; and Texas Government Code §2001.004, Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions.

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 December 14, 2015.

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Kim Vickers
Executive Director
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For further information, please call: (512) 936-7713

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37 TAC §223.11

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §223.11, concerning Proposal for Decision and Exceptions or Briefs, as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7600).

The repealed section is recodified into new rule §223.5.

This repeal is necessary as it recodifies the section into new rule §223.5.

No comments were received concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; §1701.505, Administrative Procedure; and Texas Government Code §2001.004, Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions.

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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Kim Vickers
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For further information, please call: (512) 936-7713

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37 TAC §223.14

The Texas Commission on Law Enforcement (Commission) adopts new §223.14, concerning Construction of Other Laws, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7600).

This new rule recodifies previous rules related to criminal dispositions.

This new rule is necessary to recodify previous rules related to criminal dispositions.

No comments were received regarding the adoption of this new rule.

The new rule is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.312, Disqualification: Felony Conviction or Placement on Community Supervision.

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 December 14, 2015.

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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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37 TAC §223.15

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §223.15, concerning Suspension of License, as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7601).

The repealed section is recodified into new rule §223.15.

This repeal is necessary to recodify into a new rule.

No comments were received concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; §1701.1524, Rules Relating to Consequences of Criminal Conviction or Deferred Adjudication; §1701.312, Disqualification: Felony Conviction or Placement on Community Supervision; and §1701.4521, License Suspension for Officer Dishonorably Discharged.

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 December 14, 2015.

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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
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For further information, please call: (512) 936-7713

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37 TAC §223.15

The Texas Commission on Law Enforcement (Commission) adopts new §223.15, concerning License Suspension, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7601).

This new rule recodifies the previous rules related to license suspension.

This new rule is necessary to recodify previous rules related to license suspension.

One public comment was received.

Comment:

Considering (c) deleting Class C and insert Class A or B misdemeanor. (clarify so someone does not argue a felony is above a class C misdemeanor and then establish a conflict between two rules.)

There were no changes due to public comments because felony offenses are specifically addressed elsewhere in the law.

The new rule is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; §1701.1524, Rules Relating to Consequences of Criminal Conviction or Deferred Adjudication; §1701.312, Disqualification: Felony Conviction or Placement on Community Supervision; and §1701.4521, License Suspension for Officer Dishonorably Discharged.

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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Kim Vickers
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For further information, please call: (512) 936-7713

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37 TAC §223.16

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §223.16, concerning Suspension of License for Constitutionally Elected Officials, as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7602).

This repealed section is consolidated in new §223.15.

This repeal is necessary to consolidate in new §223.15.

No comments were received concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; §1701.1524, Rules Relating to Consequences of Criminal Conviction or Deferred Adjudication; §1701.302, Certain Elected Law Enforcement Officers; License Required; §1701.312, Disqualification: Felony Conviction or Placement on Community Supervision; and §1701.4521, License Suspension for Officer Dishonorably Discharged.

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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Kim Vickers
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For further information, please call: (512) 936-7713

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37 TAC §223.16

The Texas Commission on Law Enforcement (Commission) adopts new §223.16, concerning Probation and Mitigating Factors, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7602).

This new rule recodifies the previous rules related to license suspension.

This new rule is necessary to recodify previous rules related to license suspension.

No comments were received regarding the adoption of this new rule.

The new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority; §1701.1524, Rules Relating to Consequences of Criminal Conviction or Deferred Adjudication; §1701.312, Disqualification: Felony Conviction or Placement on Community Supervision; and §1701.4521, License Suspension for Officer Dishonorably Discharged.

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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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
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Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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37 TAC §223.17

The Texas Commission on Law Enforcement (Commission) adopts an amendment to §223.17, concerning Reinstatement of a License, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7603).

This amendment removes unnecessary cross-references.

This amendment is necessary to remove redundant cross-references.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; §1701.501, Disciplinary Action; and §1701.502, Felony Conviction or Placement on Community Supervision.

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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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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37 TAC §223.18

The Texas Commission on Law Enforcement (Commission) adopts new §223.18, concerning Suspension Following Felony Arrest, with changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7604).

This new rule allows the commission to suspend the license of an appointed person arrested or indicted for certain felony offenses. The rule is necessary to protect the safety and welfare of the public and the integrity of the profession by preventing licensed felony arrestees from engaging in the duties of peace officers, jailers, and telecommunicators during the pendency of a criminal disposition.

This new rule is necessary to protect the safety and welfare of the public and the integrity of the profession. This rule is made in response to amendments to the Texas Administrative Procedure Act.

Two comments were received concerning this new rule.

First comment

You will be taking a person's ability to maintain employment and will essentially be depriving him of a property interest without due process by taking the license. The example provided at the last meeting was from an agency that was retaining the officer in their employment after the charges were filed. I would imagine that local department head knows best the facts and other non-factual issues that surround the situation and is best suited

to judge the validity of the charges and the impact on the department, the city and the community. The HPOU leadership will be responding to this further with examples of several situations where officers were charged with a felony, were kept on the payroll, maintained their license in the interim and the charges were either dropped as a result of their being proved to be groundless or found not guilty by a court.

License suspensions have a built in due process procedure. The license is not suspended until after notice is provided of the license holder, a hearing at SOAH is held and the Commission considers the SOAH proposal. Suspending a license without due process could produce a cause of action for civil liability. If the charges are dropped, the facts are shown to be without support or the person is found not guilty will the department be forced to hire him back, who will pay for the loss of income for a deprivation of a license without due process, etc. These issues should be thoroughly vetted prior to implementing a new rule to take away a person's ability to hold a license and thus deprive him of the ability to maintain employment.

The rule also says the commission may consider certain factors in determining immediate peril, not the executive director. That suggests notice, an opportunity to be heard and places the Commission in the place of SOAH in determining a license suspension action. This rule is fraught with issues and should be withdrawn for further study and consideration.

Second comment

This memo serves as notice that the North Texas Police Chiefs Association is in full support of the Texas Commission on Law Enforcement's proposed rule change of Title 37 Texas Administrative Code Chapter 223.18.

The proposed change is to the rule on "Suspension Following a Felony Arrest." After discussion on the topic, we feel this will be a positive change and will serve to enhance the trust of the public we serve.

In a time when the integrity of the law enforcement community is often challenged, the North Texas Police Chiefs Association feels this change is a step in the right direction to further display our dedication in serving our communities with the utmost professionalism.

The agency responded by removing the words "if applicable, upon final disposition of criminal proceedings" in subsection (d) and changing the word "remains" for the words "may be" in subsection (f). The summary suspension and hearing provision of this rule reflect those set forth in the amendments to the Administrative Procedure Act which forms part of the basis for this rule.

The new rule is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and Texas Government Code §2001.054, Licenses.

§223.18. Suspension Following Felony Arrest.

(a) The commission may suspend the license of a person arrested or indicted for a felony offense which would constitute an immediate peril to the public health, safety or welfare if the person were to remain licensed during the pendency of criminal proceedings.

(b) By virtue of their nature, the following felony arrests constitute immediate peril:

(1) Sexual offenses;

(2) Assaultive offenses; and

(3) Offenses directly relating to the duties and responsibilities of any related office held by that person.

(c) In determining whether any other felony arrest creates an immediate peril to the public health, safety or welfare, factors the commission may consider include:

(1) the seriousness of the conduct resulting in the arrest;

(2) the required mental state of the alleged offense;

(3) whether the alleged offense contains an element of actual or threatened bodily injury or coercion against another person under the Texas Penal Code or the law of the jurisdiction where the offense occurred;

(4) the licensee's previous violations of commission statutes or rules;

(5) actual or potential harm to public safety resulting from the conduct resulting in the arrest; and

(6) aggravating circumstances existing in a particular case.

(d) If an offense constitutes immediate peril, the commission will notify the person of the summary suspension order and the intention to initiate proceedings.

(e) If a person does not receive notice of the intent to initiate proceedings within 30 days of the commission's order, the person may appeal to the Travis County district court.

(f) A person may request a hearing regarding the summary suspension within 20 days after the summary suspension order is received. Otherwise, the license may be suspended until final disposition of the case.

(g) The effective date of this section is February 1, 2016.

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 December 14, 2015.

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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
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For further information, please call: (512) 936-7713

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37 TAC §223.19

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §223.19, concerning Revocation of License, as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7605).

The repealed section is recodified into new rule §223.19.

This repeal is necessary to recodify into a new rule.

No comments were received concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; §1701.4521, License Suspension for Officer Dishonorably Discharged; §1701.501, Disciplinary Action; and

§1701.502, Felony Conviction or Placement on Community Supervision.

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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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
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Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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37 TAC §223.19

The Texas Commission on Law Enforcement (Commission) adopts new §223.19, concerning License Revocation, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7605).

This new rule recodifies the previous rules related to license revocation.

This new rule is necessary to recodify and streamline previous rules related to license revocation.

One public comment was received.

Comment:

This is in contrast to 223.15(b) which provides for a 30 year suspension if a person receives deferred adjudication and placed on community supervision. The proposed language requires a revocation for a person convicted of a felony. Since your rules include a deferred adjudication as a conviction, you may wish to examine this further to alleviate any confusion. As I mentioned earlier, you may wish to define conviction as a finding of guilt, a plea of guilty, community supervision, probate or deferred adjudication to attempt to capture all variations and use the term "convicted" or "conviction" (see definitions "3" above) .

There were no changes due to public comment because suspensions and revocations for felony offenses are initiated by felony deferred adjudications and convictions respectively. Specifically, statute requires a summary revocation for a felony conviction. Likewise, statute requires a summary suspension for a felony deferred adjudication. So, for the purposes of determining license sanction for felony dispositions, the terms conviction and deferred adjudication are not synonymous.

The new rule is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; §1701.4521, License Suspension for Officer Dishonorably Discharged; §1701.501, Disciplinary Action; and §1701.502, Felony Conviction or Placement on Community Supervision.

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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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
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For further information, please call: (512) 936-7713

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37 TAC §223.20

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §223.20, concerning Revocation of License for Constitutionally Elected Officials, as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7606).

The repealed section is consolidated into new §223.19.

This repeal is necessary to consolidate into new §223.19.

No comments were received concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; §1701.4521, License Suspension for Officer Dishonorably Discharged; §1701.501, Disciplinary Action; and §1701.502, Felony Conviction or Placement on Community Supervision.

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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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
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Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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37 TAC §223.21

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §223.21, concerning Appeal, as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7607).

The repealed section is recodified in new rule §223.5.

This repeal is necessary to be recodified in a new rule.

No comments were received concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; §1701.506, Appeal; and Texas Government Code, Chapter 2001, Administrative Procedure Act.

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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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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CHAPTER 227. SCHOOL MARSHALS

37 TAC §227.1

The Texas Commission on Law Enforcement (Commission) adopts amendments to §227.1, concerning School District Responsibilities, with changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7607). These changes to subsection (c) are necessary to clarify the retention of documentation.

The rule title is amended and the rule is amended to include public junior college.

This amended rule is necessary to reflect legislative changes from SB 386 (84R).

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; §1701.260, Training for Holders of License to Carry Handgun; Certification for Eligibility for Appointment as School Marshal; Texas Education Code §51.220, Public Junior College School Marshals; and Texas Code of Criminal Procedure, §2.127, School Marshals.

§227.1. Appointing Entity Responsibilities.

(a) A school district or public junior college shall:

(1) submit and receive approval for an application to appoint a person as a school marshal;

(2) upon authorization, notify the commission using approved format prior to appointment;

(3) report to the commission, within seven days, when a person previously authorized to act as a school marshal is no longer employed with the school district or public junior college;

(4) report to the commission, within seven days, when a person previously authorized to act as a school marshal is no longer authorized to do so by the school district, public junior college, commission standards, another state agency, or under other law; and

(5) immediately report to the commission a school marshal's violation of any commission standard, including the discharge of a firearm carried under the authorization of this chapter outside of a training environment.

(b) A school district or public junior college shall not appoint or employ an ineligible person as a school marshal.

(c) For five years, the school district or public junior college must retain documentation that the district or junior college has met all requirements under law in a format readily accessible to the commission. This requirement does not relieve a school district or public junior college from retaining all other relevant records not otherwise listed.

(d) The effective date of this section is February 1, 2016.

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 December 15, 2015.

TRD-201505640
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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37 TAC §227.3

The Texas Commission on Law Enforcement (Commission) adopts an amendment to §227.3, concerning School Marshal Licensing and Reporting Requirements, with changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7608). These changes are necessary to clarify reporting requirements.

This rule is amended to include public junior college.

This amended rule is necessary to reflect legislative changes from SB 386.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; §1701.260, Training for Holders of License to Carry Handgun; Certification for Eligibility for Appointment as School Marshal; Texas Education Code §51.220, Public Junior College School Marshals; and Texas Code of Criminal Procedure, §2.127, School Marshals.

§227.3. School Marshal Licensing and Reporting Requirements.

(a) To be eligible for appointment as a school marshal, an applicant shall:

(1) successfully complete all prerequisite commission training;

(2) pass the state licensing exam;

(3) be employed and appointed by an authorized school district; and

(4) meet all statutory requirements, including psychological fitness.

(b) Once appointed, a school marshal shall:

(1) immediately report to the commission and school district or public junior college any circumstance which would render them unauthorized to act as a school marshal by virtue of their employment with the school district or public junior college, failure to meet the standards of the commission, another state agency, or under law;

(2) immediately report to the commission any violation of applicable commission standards, including any discharge of a firearm

carried under the authorization of this chapter outside of training environment; and

(3) comply with all requirements under law, including Texas Education Code, §37.0811.

(c) The effective date of this section is February 1, 2016.

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 December 15, 2015.

TRD-201505641
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 936-7713

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37 TAC §227.5

The Texas Commission on Law Enforcement (Commission) adopts an amendment to §227.5, concerning School Marshal Training Entities, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7609).

This rule is amended to include public junior colleges.

This amended rule is necessary to reflect legislative changes from SB 386 (84R).

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; §1701.260, Training for Holders of License to Carry Handgun; Certification for Eligibility for Appointment as School Marshal; Texas Education Code §51.220, Public Junior College School Marshals; and Texas Code of Criminal Procedure, §2.127, School Marshals.

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 December 15, 2015.

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37 TAC §227.9

The Texas Commission on Law Enforcement (Commission) adopts an amendment to §227.9, concerning License Action, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7609).

This rule is amended to remove the term "concealed" in response to legislative changes.

This amended rule reflects legislative changes from HB 910 (84R).

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority; §1701.260, Training for Holders of License to Carry Handgun; Certification for Eligibility for Appointment as School Marshal; Texas Education Code §51.220, Public Junior College School Marshals; and Texas Code of Criminal Procedure, §2.127, School Marshals.

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 December 15, 2015.

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37 TAC §227.11

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §227.11, concerning Confidentiality of Information, as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7610).

This rule contains redundant information that is already in statute.

This repeal is necessary to comply with SB 386 and SB 996 (84R), which address the confidentiality of information on school marshals.

No comments were received concerning the proposed repeal.

This repeal is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.260, Training for Holders of License to Carry Handgun; Certification for Eligibility for Appointment as School Marshal.

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 December 15, 2015.

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PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 358. IDENTIFYING, REPORTING AND INVESTIGATING ABUSE, NEGLECT, EXPLOITATION, DEATH AND SERIOUS INCIDENTS

The Texas Juvenile Justice Department (TJJD) adopts amendments to the following rules in Chapter 358: §§358.120, 358.140, and 358.200, concerning Identifying, Reporting, and Investigating Abuse, Neglect, Exploitation, Death, and Serious Incidents without changes to the proposed text as published in the July 3, 2015, issue of the *Texas Register* (40 TexReg 4334).

TJJD also adopts the repeal of §§358.300, 358.320, 358.400, 358.420, 358.440, 358.460, 358.480, 358.500, 358.600, 358.620, 358.640, 358.660, 358.680, 358.700, 358.720, 358.740, 358.760, 358.780, 358.800, 358.820, 358.840, 358.900, and 358.920, concerning Identifying, Reporting, and Investigating Abuse, Neglect, Exploitation, Death, and Serious Incidents without changes to the proposed text as published in the July 3, 2015, issue of the *Texas Register* (40 TexReg 4334).

TJJD also adopts new §§358.240, 358.340, 358.360, 358.500, 358.540, 358.600, and 358.620, concerning Identifying, Reporting, and Investigating Abuse, Neglect, Exploitation, Death, and Serious Incidents without changes to the proposed text as published in the July 3, 2015, issue of the *Texas Register* (40 TexReg 4334).

TJJD adopts amendments to §358.100 and §358.220, concerning Identifying, Reporting, and Investigating Abuse, Neglect, Exploitation, Death, and Serious Incidents with changes to the proposed text as published in the July 3, 2015, issue of the *Texas Register* (40 TexReg 4334).

TJJD also adopts new §§358.300, 358.320, 358.400, 358.420, 358.440, 358.460, 358.520 with changes to the proposed text as published in the July 3, 2015, issue of the *Texas Register* (40 TexReg 4334).

Changes to the proposed text in §358.100 consist of adding a definition of Private Facility Administrator. A minor grammatical correction was also made.

Changes to the proposed text in §358.220 consist of adding a requirement for the private facility administrator to ensure necessary data is provided to TJJD.

Changes to the proposed text in §358.300 consist of removing wording that required the chief administrative officer or designee to be the person who submits certain written reports to the Attorney General and to TJJD.

Changes to the proposed text in §358.320 consist of removing wording that required the chief administrative officer or designee to be the person who notifies or attempts to notify the parent, guardian, or custodian when a juvenile has died or is the subject of an allegation of abuse, neglect, or exploitation.

Changes to the proposed text in §358.400 consist of adding that the *juvenile board chair* (rather than the whole board) has the duty to conduct the internal investigation or appoint an individual to do so when the chief administrative officer is the person alleged to have abused, neglected, or exploited a juvenile. The changes also include extending this requirement to apply to cases in which a private facility administrator is the person alleged to have abused, neglected, or exploited a juvenile.

Changes to the proposed text in §358.420 consist of adding that in cases where the chief administrative officer or the private facility administrator is the person alleged to have abused, neglected, or exploited a juvenile, the juvenile board chair must immediately place him/her on administrative leave or reassign him/her to a position having no contact with the alleged victim, relatives of the alleged victim, or other juveniles.

Changes to the proposed text in §358.440 consist of expanding the wording to require individuals other than just the juvenile board, chief administrative officer, or designee to make a diligent effort to identify and make available all persons with knowledge of an allegation or death and to provide TJJD with any evidence requested by TJJD.

Changes to the proposed text in §358.460 consist of expanding the wording to require individuals other than just the governing board, juvenile board, chief administrative officer, or designee to take appropriate corrective measures, when warranted, after an internal investigation.

Changes to the proposed text in §358.520 consist of making a minor wording clarification and correcting a typographical error.

JUSTIFICATION FOR CHANGES

The public benefit anticipated as a result of administering the sections will be the protection of juveniles through an organized system of identifying, reporting, and investigating alleged abuse, neglect, and exploitation. Another anticipated public benefit is the availability of rules that are clarified and reorganized for ease of use.

SUMMARY OF CHANGES

In addition to the changes described earlier in this notice, the amendments to §358.100: 1) revise the definitions of *Sexual Abuse by Contact* and *Sexual Abuse by Non-Contact* to more closely align with the Prison Rape Elimination Act National Standards for Juveniles (28 C.F.R. Part 115); 2) add definitions for the following terms: *Attempted Escape, Chief Administrative Officer,* and *TJJD;* 3) delete definitions for the following terms: *Administrator, Call Line,* and *Commission;* 4) in the definition of *Juvenile Justice Facility,* revise the description of a non-secure facility to align with the types of non-secure facilities that must be certified by the juvenile board under Family Code §51.126; and 5) clarify that *Youth Sexual Conduct* includes defined conduct between two or more juveniles, regardless of whether the juveniles consented to the conduct.

The amendments to §358.120 delete the paragraph about use of headings. The rule also clarifies that the words "include," "includes," and "including" mean that a non-exhaustive list will follow.

The amendments to §358.140 clarify that the chapter applies to employees, volunteers, and *other individuals working under the auspices* of a juvenile justice facility or program (rather than all

"contractors and service providers" in a department, facility, or program.) This new wording is consistent with the definition of abuse in Texas Family Code §261.401. The rule also adds a provision explaining that working "under the auspices of a facility or program" means the person is providing a service to juveniles when that service is a condition imposed by a juvenile court or juvenile probation department.

The amendments to §358.200 include only minor, non-substantive wording changes.

The amendments to §358.220: 1) delete "driver's license number or state-issued identification number of subject(s) of investigation" from the list of data that must be submitted to TJJD annually; 2) clarify that departments must submit any additional information not listed in this rule if specifically requested by TJJD; and 3) re-title the rule as "Data Reconciliation."

The contents of the new §358.240 were previously found in §358.480. The text of the new section includes only minor, non-substantive wording changes.

New §358.300 consolidates information from §358.400, §358.500, §358.600, and §358.640. All information regarding time frames and methods for reporting alleged abuse, neglect, and exploitation, including sexual abuse, serious physical abuse, and death, can now be found in the new §358.300.

The repeal of §358.300 allows this section number to be used for a new section with different content. The information from this rule has been moved to the new §358.600.

The contents of the new §358.320 were previously found in §358.460. The text of the new section clarifies that the parental notice or the attempt to notify must be documented on the Incident Report Form *and* (rather than "or") in the internal investigation report.

The repeal of §358.320 allows this section number to be used for a new section with different content. The information from this rule has been moved to the new §358.620.

The contents of the new §358.340 were previously found in §358.440. The text of the new section clarifies that during orientation in a *juvenile justice program* (in addition to orientation in a juvenile justice facility), juveniles must be advised in writing of their right to report allegations of abuse to TJJD.

The contents of the new §358.360 were previously found in §358.420. The text of the new section makes only minor, non-substantive wording changes.

The contents of the new §358.400 were previously found in §§358.620, 358.660, 358.680, 358.700, 358.740, and 358.760. Other than consolidating information regarding internal investigations into one rule, no substantive changes are made.

The repeal of §358.400 allows this section number to be used for a new section with different content. The information from this rule has been moved to the new §358.300.

The contents of the new §358.420 were previously found in §358.720. The text of the new section makes only minor, non-substantive wording changes.

The repeal of §358.420 allows this section number to be used for a new section with different content. The information from this rule has been moved to the new §358.360.

The contents of the new §358.440 were previously found in §358.900. The text of the new section makes only minor, non-substantive wording changes.

The repeal of §358.440 allows this section number to be used for a new section with different content. The information from this rule has been moved to the new §358.340.

The contents of the new §358.460 were previously found in §358.780. The text of the new section makes only minor, non-substantive wording changes.

The repeal of §358.460 allows this section number to be used for a new section with different content. The information from this rule has been moved to the new §358.320.

Section 358.480 has been repealed. The contents of this rule have been moved to the new §358.240.

The contents of the new §358.500 were previously found in §358.800. The text of the new section makes only minor, non-substantive wording changes.

The repeal of §358.500 allows this section number to be used for a new section with different content. The information from this rule has been moved to the new §358.300.

The contents of the new §358.520 were previously found in §358.820. The text of the new section makes only minor, non-substantive wording changes.

The contents of the new §358.540 were previously found in §358.840. The text of the new section deletes the phrase "if the release is allowed by law" from the requirement to submit relevant medical documentation to TJJD along with the internal investigation report.

The contents of the new §358.600 were previously found in §358.300. The text of the new section makes only minor, non-substantive wording changes.

The repeal of §358.600 allows this section number to be used for a new section with different content. The information from this rule has been moved to the new §358.300.

The contents of the new §358.620 were previously found in §358.320. The text of the new section makes only minor, non-substantive wording changes.

The repeal of §358.620 allows this section number to be used for a new section with different content. The information from this rule has been moved to the new §358.400.

Section 358.640 has been repealed. The duty to submit a custodial death report to the Office of the Attorney General has been moved to the new §358.300. The duty to complete an internal investigation report has been addressed in the new §358.500.

Section 358.660 has been repealed. The duty to investigate any death in a department or program has been addressed in the new §358.400. The duty to complete an internal investigation report has been addressed in the new §358.500.

Section 358.680 has been repealed. The duty to investigate any death in a department or program has been addressed in the new §358.400. The duty to complete an internal investigation report has been addressed in the new §358.500.

Section 358.700 has been repealed. The contents of this rule have been moved to the new §358.400.

Section 358.720 has been repealed. The contents of this rule have been moved to the new §358.420.

Section 358.740 has been repealed. The contents of this rule have been moved to the new §358.400.

Section 358.760 has been repealed. The contents of this rule have been moved to the new §358.400.

Section 358.780 has been repealed. The contents of this rule have been moved to the new §358.460.

Section 358.800 has been repealed. The contents of this rule have been moved to the new §358.500.

Section 358.820 has been repealed. The contents of this rule have been moved to the new §358.520.

Section 358.840 has been repealed. The contents of this rule have been moved to the new §358.540.

Section 358.900 has been repealed. The contents of this rule have been moved to the new §358.440.

Section 358.920 has been repealed and will not be moved to a new section number. Additional legal review has determined that TJJD does not have the statutory authorization to permanently remove names from original TJJD records.

RULE REVIEW

In the Proposed Rules section of the July 3, 2015, issue of the *Texas Register* (40 TexReg 4334), TJJD published its notice of intent to review Chapter 358 as required by Texas Government Code §2001.039. TJJD did not receive any public comments regarding the rule review.

TJJD has also determined that the reasons for adopting all remaining rules in this chapter continue to exist. Accordingly, §§358.100, 358.120, 358.140, 358.200, 358.220 are readopted with amendments as described in this notice.

TJJD has also determined that following rules should also be repealed, but the content of the rules has been moved to new or existing rule: §§358.300, 358.320, 358.400, 358.420, 358.440, 358.460, 358.480, 358.500, 358.600, 358.620, 358.640, 358.660, 358.680, 358.700, 358.720, 358.740, 358.760, 358.780, 358.800, 358.820, 358.840, 358.900.

TJJD has concluded the rule review and has determined that §358.920 should be repealed. Accordingly, this rule has been repealed as described earlier in this notice.

PUBLIC COMMENTS

TJJD did not receive any public comments regarding the proposed amendments, repeals, or new rules.

37 TAC §§358.100, 358.120, 358.140, 358.200, 358.220, 358.240, 358.300, 358.320, 358.340, 358.360, 358.400, 358.420, 358.440, 358.460, 358.500, 358.520, 358.540, 358.600, 358.620

STATUTORY AUTHORITY

The amended and new sections are adopted under Texas Human Resources Code §221.002, which requires TJJD to adopt rules that provide minimum standards for the operation of a juvenile board that are necessary to provide adequate and effective probation services. The amended and new sections are also adopted under Texas Human Resources Code §221.004, which requires TJJD to adopt rules that provide standards for the collection and reporting of information about juvenile offenders by local probation departments. Additionally the amended and new sections are adopted under Texas Family Code §261.401, which requires TJJD to adopt rules relating to the investigation and resolution of reports received concerning abuse, neglect, or exploitation.

§358.100. Definitions.

Terms used in this chapter have the following meanings unless otherwise expressly defined within the chapter.

(1) Abuse, Neglect, or Exploitation--The terms "abuse," "neglect," and "exploitation" have the meanings given in Texas Family Code §261.001 and §261.401. For the purposes of this chapter, "abuse" includes sexual abuse and serious physical abuse as defined in this section.

(2) Alleged Victim--A juvenile who is alleged to be a victim of abuse, neglect, or exploitation.

(3) Attempted Escape--Committing an act that amounts to more than mere planning but that fails to effect an escape.

(4) Attempted Suicide--Any voluntary and intentional action that could likely result in taking one's own life.

(5) Chief Administrative Officer--Regardless of title, the person hired by a juvenile board who is responsible for oversight of the day-to-day operations of a juvenile probation department, including a juvenile probation department with multi-county jurisdiction.

(6) Escape--The unauthorized departure of a juvenile who is in custody or the failure of a juvenile to return to custody following an authorized temporary leave.

(7) Founded--The finding assigned to an internal investigation when the evidence indicates that the conduct which formed the basis of an allegation of abuse, neglect, or exploitation occurred.

(8) Incident Report Form--The form used to report to TJJD allegations of abuse, neglect, or exploitation, the death of a juvenile, and serious incidents.

(9) Inconclusive--The finding assigned to an internal investigation when the evidence does not clearly indicate whether or not the conduct that formed the basis of an allegation of abuse, neglect, or exploitation occurred.

(10) Internal Investigation--A formalized and systematic inquiry conducted in response to an allegation of abuse, neglect, or exploitation or the death of a juvenile.

(11) Internal Investigation Report--The written report submitted to TJJD that summarizes the steps taken and the evidence collected during an internal investigation of alleged abuse, neglect, or exploitation or the death of a juvenile.

(12) Juvenile--A person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility, or participating in a juvenile justice program.

(13) Juvenile Justice Facility ("facility")--A facility that serves juveniles under juvenile court jurisdiction and that is operated wholly or partly by or under the authority of the governing board or juvenile board or by a private vendor under a contract with the governing board, juvenile board, or governmental unit. The term includes all premises and affiliated sites of the facility, whether contiguous or detached. The term includes, but is not limited to:

(A) a public or private juvenile pre-adjudication secure detention facility, including a short-term detention facility (i.e., holdover), required to be certified in accordance with Texas Family Code §51.12;

(B) a public or private juvenile post-adjudication secure correctional facility required to be certified in accordance with Texas Family Code §51.125; and

(C) a public or private juvenile non-secure correctional facility required to be certified in accordance with Texas Family Code §51.126.

(14) Juvenile Justice Program ("program")--A program or department that:

(A) serves juveniles under juvenile court or juvenile board jurisdiction;

(B) is operated wholly or partly by the governing board, juvenile board, or by a private vendor under a contract with the governing board or juvenile board. The term includes:

(i) a juvenile justice alternative education program;

(ii) a non-residential program that serves juvenile offenders under the jurisdiction of the juvenile court or juvenile board; and

(iii) a juvenile probation department.

(15) Juvenile Probation Department ("department")--A governmental unit established under the authority of a juvenile board to facilitate the execution of the responsibilities of a juvenile probation department enumerated in Title 3 of the Texas Family Code and Chapter 221 of the Texas Human Resources Code.

(16) Medical Treatment--Medical care, processes, and procedures that are performed by a physician, physician assistant, licensed nurse practitioner, emergency medical technician (EMT), paramedic, or dentist. Diagnostic procedures are excluded from this definition unless intervention beyond basic first aid is required.

(17) Private Facility Administrator--The individual designated by the governing board of the facility who has the ultimate responsibility for on-site management and operation of a facility operated under contract with the juvenile board.

(18) Reasonable Belief--A belief that would be held by an ordinary and prudent person in the same circumstances.

(19) Report--Formal notification to TJJD of alleged abuse, neglect, or exploitation, the death of a juvenile, or a serious incident.

(20) Reportable Injury--Any injury sustained by a juvenile accidentally, intentionally, recklessly, or otherwise that:

(A) does not result from a personal, mechanical, or chemical restraint and requires medical treatment; or

(B) results from a personal, mechanical, or chemical restraint and is a substantial injury.

(21) Serious Incident--Attempted escape, attempted suicide, escape, reportable injury, youth-on-youth physical assault, or youth sexual conduct.

(22) Serious Physical Abuse--Bodily harm or a condition that:

(A) resulted directly or indirectly from the conduct that formed the basis of an allegation of abuse, neglect, or exploitation; and

(B) requires medical treatment.

(23) Sexual Abuse--Conduct committed by an employee, volunteer, or other individual working under the auspices of a facility or program against a juvenile that includes sexual abuse by contact or sexual abuse by non-contact. A juvenile, regardless of age, may not consent to the acts as defined in paragraphs (24) and (25) of this section under any circumstances.

(24) Sexual Abuse by Contact--Any physical contact with a juvenile that includes:

(A) contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(B) contact between the mouth and the penis, vulva, or anus;

(C) contact between the mouth and any body part with the intent to abuse, arouse, or gratify sexual desire;

(D) penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the actor has the intent to abuse, arouse, or gratify sexual desire;

(E) any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the actor has the intent to abuse, arouse, or gratify sexual desire; and

(F) any attempt to engage in the activities described in subparagraphs (A) - (E) of this paragraph.

(25) Sexual Abuse by Non-Contact--Any sexual behavior, conduct, harassment, or actions other than those defined as sexual abuse by contact, which are exhibited, performed, or simulated in the presence of a juvenile or with reckless disregard for the presence of a juvenile, including but not limited to:

(A) any threat or request for a juvenile to engage in the activities described in paragraph (24) of this section;

(B) any display of uncovered genitalia, buttocks, or breasts in the presence of a juvenile;

(C) voyeurism, which means an invasion of privacy of a juvenile for reasons unrelated to official duties, such as peering at a juvenile who is using a toilet to perform bodily functions; requiring a juvenile to expose his or her buttocks, genitals, or breasts; or taking images of all or part of a juvenile's naked body or of a juvenile performing bodily functions; and

(D) sexual harassment, which includes repeated verbal comments or gestures of a sexual nature, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

(26) Subject of Investigation--A person alleged as being responsible for the abuse, neglect, or exploitation of a juvenile through the person's own actions or failure to act.

(27) Substantial Injury--An injury that is significant in size, degree, or severity.

(28) TJJD--the Texas Juvenile Justice Department.

(29) Unfounded--The finding assigned to an internal investigation when the evidence indicates the conduct that formed the basis of an allegation of abuse, neglect, or exploitation did not occur.

(30) Youth-on-Youth Physical Assault--A physical altercation between two or more juveniles that results in any of the involved parties sustaining an injury that requires medical treatment.

(31) Youth Sexual Conduct--Conduct between two or more juveniles, regardless of age, that is conduct described in paragraphs (24) and (25) of this section, regardless of whether the juveniles consented to the conduct.

§358.220. Data Reconciliation.

(a) For all allegations of abuse, neglect, or exploitation, the death of a juvenile, and serious incidents occurring within the reporting period, the data listed in subsection (c) of this section must be provided to TJJD in the electronic format requested or supplied by TJJD.

(b) The chief administrative officer or the private facility administrator ensures the data listed in subsection (c) of this section is provided to TJJD.

(c) The data must include:

(1) name and Personal Identification Number (PID) of each alleged victim;

(2) name and date of birth of each subject of investigation;

(3) date and time of alleged incident;

(4) date the alleged incident was reported to TJJD;

(5) type of alleged incident (i.e., abuse, neglect, exploitation, death, or serious incident);

(6) type of injury, if applicable;

(7) whether the alleged incident was restraint-related and, if so, what type of restraint was involved (i.e., personal, mechanical, or chemical);

(8) disposition of internal investigation (i.e., founded, unfounded, or inconclusive); and

(9) county-generated case identification number.

(d) The data must be supplied at least annually or more frequently if required by TJJD. The data must include any additional information not listed in this section if specifically requested by TJJD.

§358.300. Identifying and Reporting Abuse, Neglect, Exploitation, and Death.

(a) Duty to Report. An employee, volunteer, or other individual working under the auspices of a facility or program must report the death of a juvenile or an allegation of abuse, neglect, or exploitation to TJJD and local law enforcement if he/she:

(1) witnesses, learns of, or receives an oral or written statement from an alleged victim or other person with knowledge of the death of a juvenile or an allegation of abuse, neglect, or exploitation; or

(2) has a reasonable belief that the death of a juvenile or abuse, neglect, or exploitation has occurred.

(b) Non-Delegation of Duty to Report. In accordance with Texas Family Code §261.101, the duty to report cannot be delegated to another person.

(c) Other than Sexual Abuse or Serious Physical Abuse.

(1) Time Frames for Reporting. A report of alleged abuse, neglect, or exploitation other than allegations involving sexual abuse or serious physical abuse must be made within 24 hours from the time a person gains knowledge of or has a reasonable belief that alleged abuse, neglect, or exploitation has occurred.

(2) Methods for Reporting.

(A) The report to TJJD may be made by phone or by faxing or e-mailing a completed Incident Report Form.

(B) If the report to TJJD is made by phone, a completed Incident Report Form must be submitted within 24 hours after the phone report.

(C) The report to law enforcement must be made by phone.

(d) Sexual Abuse or Serious Physical Abuse.

(1) Time Frames for Reporting.

(A) A report of alleged sexual abuse or serious physical abuse must be made to local law enforcement immediately, but no later than one hour after the time a person gains knowledge of or has a reasonable belief that alleged sexual abuse or serious physical abuse has occurred.

(B) A report of alleged sexual abuse or serious physical abuse must be made to TJJD immediately, but no later than four hours after the time a person gains knowledge of or has a reasonable belief that alleged sexual abuse or serious physical abuse has occurred.

(2) Methods for Reporting.

(A) The initial report to TJJD must be made by phone using the toll-free number as designated by TJJD.

(B) Within 24 hours after the initial phone report to TJJD, the completed Incident Report Form must be submitted to TJJD by fax or e-mail.

(C) The initial report to law enforcement must be made by phone.

(e) Death of a Juvenile.

(1) Time Frames for Reporting.

(A) A report of a death must be made to local law enforcement immediately, and no later than one hour after the discovery or notification of the death.

(B) A report of a death must be made to TJJD immediately, and no later than four hours after the discovery or notification of the death.

(C) A written report of the cause of death must be submitted to the state Attorney General no later than 30 days after the juvenile's death if required by Texas Code of Criminal Procedure Article 49.18(b).

(D) A copy of the death investigation report must be submitted to TJJD within 10 calendar days after completion.

(2) Methods for Reporting.

(A) The initial report to TJJD must be made by phone using the toll-free number as designated by TJJD.

(B) Within 24 hours after the phone report to TJJD, the completed Incident Report Form must be submitted to TJJD by fax or e-mail.

(C) The initial report to law enforcement must be made by phone.

§358.320. Parental Notification.

(a) Requirement to Notify. Notification, or diligent efforts to notify, must be made to the parent(s), guardian(s), and custodian(s) of a juvenile who has died or who is the alleged victim of abuse, neglect, or exploitation.

(b) Time of Notification. The notice or efforts to notify required by subsection (a) of this section must be made as soon as possible, but no later than 24 hours from the time a person gains knowledge of or has a reasonable belief that the allegation of abuse, neglect, or exploitation or the death of a juvenile occurred.

(c) Method of Notification. The notice or efforts to notify required by subsection (a) of this section may be made by phone, in writing, or in person.

(d) Documentation of Notification. The notice or efforts to notify required by subsection (a) of this section must be documented on TJJD's Incident Report Form and in the internal investigation report.

§358.400. Internal Investigation.

(a) Investigation Requirement. In every case in which an allegation of abuse, neglect, or exploitation or the death of a juvenile has occurred, an internal investigation must be conducted. The investigation must be conducted by a person qualified by experience or training to conduct a comprehensive investigation.

(b) Initiation of Investigation. The internal investigation must be initiated immediately upon the chief administrative officer or the private facility administrator or their respective designees gaining knowledge of an allegation of abuse, neglect, or exploitation or the death of a juvenile. However, the initiation of the internal investigation will be postponed if:

(1) directed by law enforcement;

(2) requested by TJJD; or

(3) the integrity of potential evidence could be compromised.

(c) Policy and Procedure. Departments, programs, and facilities must have written policies and procedures for conducting internal investigations of allegations of abuse, neglect, or exploitation or the death of a juvenile. The internal investigation must be conducted in accordance with the policies and procedures of the department, program, or facility.

(d) Juvenile Board Responsibilities. If the chief administrative officer or the private facility administrator is the person alleged to have abused, neglected, or exploited a juvenile, the juvenile board chair must:

(1) conduct the internal investigation; or

(2) appoint an individual to conduct the internal investigation who is not one of the following:

(A) the person alleged to have abused, neglected, or exploited the juvenile(s);

(B) a subordinate of the person alleged to have abused, neglected, or exploited the juvenile(s); or

(C) a law enforcement officer currently acting in the capacity as a criminal investigator for the alleged abuse, neglect, or exploitation or the death of a juvenile.

(e) Time Frame for Internal Investigation. The internal investigation must be completed within 30 business days after the initial report to TJJD. TJJD may extend this time frame upon request. TJJD may require submission of all information compiled to date or a statement of the status of the investigation when determining whether or not to grant an extension or after granting an extension.

(f) Written and Electronically Recorded Statements. During the internal investigation, diligent efforts must be made to obtain written or electronically recorded oral statements from all persons with direct knowledge of the alleged incident.

§358.420. Reassignment or Administrative Leave During the Internal Investigation.

(a) Upon gaining knowledge of an allegation of abuse, neglect, or exploitation, and until the finding of the internal investigation is determined, the person alleged to have abused, neglected, or exploited a juvenile must be placed on administrative leave or reassigned to a position having no contact with the alleged victim, relatives of the alleged victim, or other juveniles.

(b) If the chief administrative officer or the private facility administrator is the person alleged to have abused, neglected, or exploited a juvenile, the juvenile board chair must immediately place him/her on administrative leave or reassign him/her to a position having no contact with the alleged victim, relatives of the alleged victim, or other juveniles.

(c) If, during the internal investigation, the subject of investigation resigns or is terminated from employment, TJJD must be notified no later than the second business day after the resignation or termination.

(d) If a subject of investigation obtains employment in another jurisdiction before the disposition of the internal investigation has been finalized, the person may not be placed in a position having any contact with any juveniles until the disposition of the internal investigation is finalized in the county of previous employment.

§358.440. Cooperation with TJJD Investigation.

(a) All persons must fully cooperate with any investigation of an allegation of abuse, neglect, or exploitation or the death of a juvenile.

(b) A diligent effort must be made to identify and make available for questioning all persons with knowledge of an allegation of abuse, neglect, or exploitation or the death of a juvenile that is the subject of a TJJD investigation.

(c) Upon request by TJJD, all evidence must be provided to TJJD in the format requested.

§358.460. Corrective Measures.

Corrective measures must be taken at the conclusion of the internal investigation, if warranted, that may include:

(1) a review of the policies and procedures pertinent to the alleged incident;

(2) revision of any policies or procedures as needed;

(3) administrative disciplinary action or appropriate personnel actions against all persons found to have abused, neglected, or exploited a juvenile; and

(4) the provision of additional training for all appropriate persons to ensure the safety of the juveniles, employees, and others.

§358.520. Required Components of an Internal Investigation Report.

The internal investigation report must include:

(1) the date the internal investigation was initiated;

(2) the date the internal investigation was completed;

(3) the date the alleged victim's parent, guardian, or custodian was notified of the allegation, or documentation that diligent efforts to provide the notification were made;

(4) a summary of the original allegation;

(5) relevant policies and procedures related to the incident;

(6) a summary or listing of the steps taken during the internal investigation;

(7) a written summary of the content of all oral interviews conducted;

(8) a listing of all evidence collected during the internal investigation, including all audio and/or video recordings, polygraph examinations, etc.;

(9) relevant findings of the investigation that support the disposition;

(10) one of the following dispositions:

(A) founded;

(B) unfounded; or

(C) inconclusive;

(11) the administrative action, disciplinary action, or corrective measures taken to date, if applicable (e.g., termination, suspension, retrained, returned to duty, or none);

(12) the date the internal investigation report was completed;

(13) the names of all persons who participated in conducting the internal investigation; and

(14) the name and signature of the person who submitted the internal investigation report.

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 December 15, 2015.

TRD-201505657
Jill Mata
General Counsel
Texas Juvenile Justice Department
Effective date: March 1, 2016
Proposal publication date: July 3, 2015
For further information, please call: (512) 490-7278

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37 TAC §§358.300, 358.320, 358.400, 358.420, 358.440, 358.460, 358.480, 358.500, 358.600, 358.620, 358.640, 358.660, 358.680, 358.700, 358.720, 358.740, 358.760, 358.780, 358.800, 358.820, 358.840, 358.900, 358.920

STATUTORY AUTHORITY

The repealed sections are adopted under Texas Human Resources Code §221.002, which requires TJJD to adopt rules that provide minimum standards for the operation of a juvenile board that are necessary to provide adequate and effective probation services. The repealed sections are also adopted under Texas Human Resources Code §221.004, which requires TJJD to adopt rules that provide standards for the collection and reporting of information about juvenile offenders by local probation departments. Additionally the repealed sections are adopted under Texas Family Code §261.401, which requires TJJD to adopt rules relating to the investigation and resolution of reports received concerning abuse, neglect, or exploitation.

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

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 December 15, 2015.

TRD-201505658
Jill Mata
General Counsel
Texas Juvenile Justice Department
Effective date: March 1, 2016
Proposal publication date: July 3, 2015
For further information, please call: (512) 490-7278

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 4. EMPLOYMENT PRACTICES
SUBCHAPTER E. SICK LEAVE POOL PROGRAM

43 TAC §§4.51, 4.54 - 4.56

The Texas Department of Transportation (department) adopts amendments to §§4.51, 4.54, 4.55, and 4.56, concerning the Sick Leave Pool Program. The amendments to §§4.51, 4.54, 4.55, and 4.56 are adopted without changes to the proposed text as published in the October 9, 2015 issue of the *Texas Register* (40 TexReg 7046) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Currently, the Sick Leave Pool Program does not allow employees to donate sick leave to other individuals, but only to a sick leave pool. As a result of H.B. No. 1771, 84th Texas Legislature, Regular Session, Government Code, Chapter 661 was amended to add Section 661.207 to allow employees to donate sick leave to another individual from the same agency.

Amendments to §4.51, Definitions, clarify the definitions of "Contribute" and "Request" to add that sick leave can be given to a specific employee and to update terminology associated with the program.

Amendments to §4.54, Contributions, allow an employee to contribute sick leave to a specific employee and describes the processes for doing so.

Amendments to §4.55, Contribution Returns, provide that sick leave contributed to a specific employee cannot be returned to the donor because, unlike the statutes relating to the sick leave pool, Government Code, §661.207, does not provide authority for an agency to return donated sick leave to the donating employee.

Amendments to §4.56, Withdrawals, update terminology associated with the program.

COMMENTS

No comments were received on the proposed amendments to §§4.51, 4.54, 4.55, and 4.56.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission

(commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, §661.207.

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 December 17, 2015.

TRD-201505718
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: January 6, 2016
Proposal publication date: October 9, 2015
For further information, please call: (512) 463-8630

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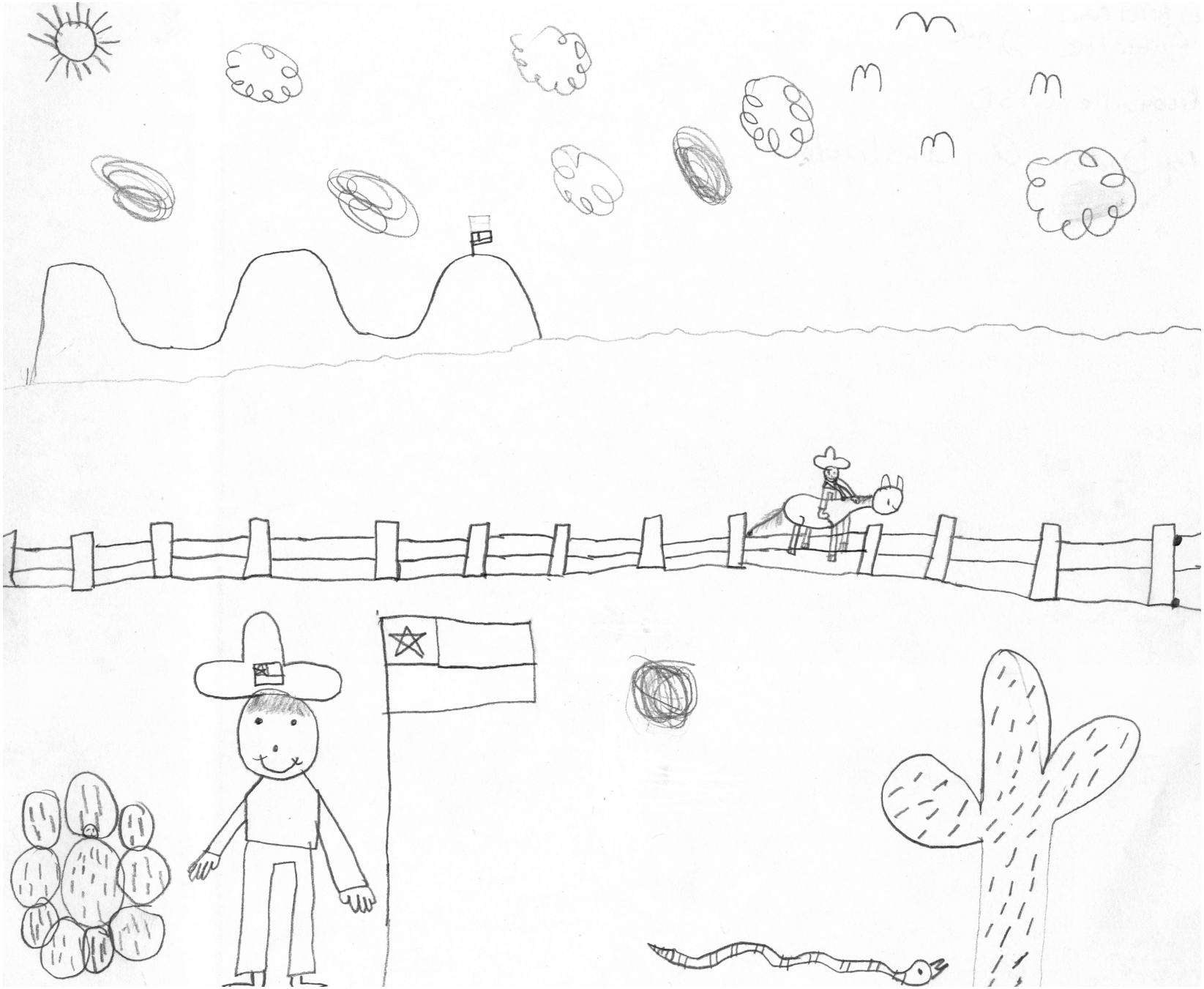

REVIEW OF AGENCY RULES

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.

Proposed Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 103, Health and Safety, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 103 are organized under the following subchapters: Subchapter AA, Commissioner's Rules Concerning Physical Fitness; Subchapter BB, Commissioner's Rules Concerning General Provisions for Health and Safety; and Subchapter CC, Commissioner's Rules Concerning Safe Schools.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 103, Subchapters AA-CC, continue to exist.

The public comment period on the review of 19 TAC Chapter 103, Subchapters AA-CC, begins January 1, 2016, and ends February 1, 2016. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.texas.gov or faxed to (512) 463-5337.

TRD-201505811
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: December 18, 2015

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Adopted Rule Reviews

Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code (TAC), Title 7, Part 5, Chapter 85, Subchapter B, concerning Rules for Crafted Precious Metal Dealers, comprised of §§85.1001 - 85.1011 and §85.2001 - §85.2002, pursuant to Texas Government Code, §2001.039.

Notice of the review of 7 TAC Part 5, Chapter 85, Subchapter B was published in the *Texas Register* as required on November 13, 2015, (40 TexReg 8035). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this subchapter continue to exist.

As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. The commission is concurrently proposing amendments to Chapter 85, Subchapter B, as published elsewhere in this issue of the *Texas Register.*

Subject to the proposed amendments to Chapter 85, Subchapter B, the commission finds that the reasons for initially adopting these rules continue to exist, and readopts this subchapter in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 7 TAC Part 5, Chapter 85, Subchapter B.

TRD-201505814
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 18, 2015

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Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 102, Educational Programs, Subchapter AA, Commissioner's Rules Concerning Early Childhood Education Programs; Subchapter BB, Commissioner's Rules Concerning Master Teacher Grant Programs; Subchapter CC, Commissioner's Rules Concerning Coordinated Health Programs; Subchapter DD, Commissioner's Rules Concerning the Texas Accelerated Science Achievement Program Grant; Subchapter EE, Commissioner's Rules Concerning Pilot Programs, §§102.1051, 102.1053, 102.1055-102.1057; Subchapter FF, Commissioner's Rules Concerning Educator Award Programs, §102.1073; Subchapter GG, Commissioner's Rules Concerning College and Career Readiness School Models; Subchapter HH, Commissioner's Rules Concerning the Texas Adolescent Literacy Academies; and Subchapter II, Commissioner's Rules Concerning Texas High Performance Schools Consortium, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 102, Subchapters AA-DD; Subchapter EE, §§102.1051, 102.1053, and 102.1055-102.1057; Subchapter FF, §102.1073; and Subchapters GG-II, in the July 3, 2015 issue of the *Texas Register* (40 TexReg 4379).

Relating to the review of 19 TAC Chapter 102, Subchapters AA and BB, the TEA finds that the reasons for adopting Subchapters AA and BB continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapters AA and BB. No changes are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 102, Subchapter CC, the TEA finds that the reasons for adopting Subchapter CC continue to exist and readopts the rule. The TEA received no comments related to the review of Subchapter CC. At a later date, the TEA may propose an amendment to include oral health education in the coordinated school health program.

Relating to the review of 19 TAC Chapter 102, Subchapter DD; Subchapter EE, §§102.1051, 102.1053, and 102.1055-102.1057; Subchapter FF, §102.1073; and Subchapter GG, the TEA finds that the reasons for adopting Subchapter DD; Subchapter EE, §§102.1051, 102.1053, and 102.1055-102.1057; Subchapter FF, §102.1073; and Subchapter GG continue to exist and readopts the rule. The TEA received no comments related to the review of Subchapter DD; Subchapter EE, §§102.1051, 102.1053, and 102.1055-102.1057; Subchapter FF, §102.1073; and Subchapter GG. No changes are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 102, Subchapter HH, the TEA finds that the reasons for adopting Subchapter HH continue to exist and readopts the rule. The TEA received no comments related to the review of Subchapter HH. The TEA proposed an amendment to §102.1101, Attendance and Completion Requirements for Texas Adolescent Literacy Academies, in the September 25, 2015 issue of the *Texas Register* that would bring the requirements up to date, ensure the requirements reflect current statute, and align the requirements with the current accountability system.

Relating to the review of 19 TAC Chapter 102, Subchapter II, the TEA finds that the reasons for adopting Subchapter II continue to exist and readopts the rule. The TEA received no comments related to the review of Subchapter II. No changes are necessary as a result of the review.

This concludes the review of 19 TAC Chapter 102.

TRD-201505692
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: December 16, 2015

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Department of Information Resources

Title 1, Part 10

The Texas Department of Information Resources (the department/DIR) has completed its review of 1 Texas Administrative Code (TAC) Chapter 201, concerning General Administration, pursuant to the Texas Government Code §2001.039. DIR published a formal notice of rule review of Chapter 201 in the March 13, 2015, issue of the *Texas Register* (40 TexReg 1527).

As a result of the rule review, the department adopts amendments to Chapter 201 and new §201.9. The department published the amended new chapter in the September 4, 2015, issue of the *Texas Register* (40 TexReg 5577). The Board adopted the amended chapter on October 29, 2015, and the adoption notice was published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8191).

The department received no public comments on the proposed rulemaking during the 30-day comment period.

Relating to the review of 1 TAC Chapter 201, the department determined the reasons for initially adopting the chapter continue to exist.

The department's review of 1 TAC Chapter 201 is concluded.

TRD-201505764
Martin H. Zelinsky
General Counsel
Department of Information Resources
Filed: December 18, 2015

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The Texas Department of Information Resources (the department/DIR) has completed its review of 1 Texas Administrative Code (TAC) Chapter 203, concerning Management of Electronic Transactions and Signed Records, pursuant to the Texas Government Code §2001.039. DIR published a formal notice of rule review of Chapter 203 in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4489).

As a result of the rule review, the department adopts the repeal of 1 TAC 203, §§203.20, 203.21, 203.22, 203.40, 203.41, 203.42, adopts new 1 TAC 203, §§203.20, 203.22, 203.40, and 203.42, and adopts amendments to 1 TAC Chapter 203, §§203.1, 203.23, 203.24, 203.43, and 201.44. The department published the amended new chapter in the September 11, 2015, issue of the *Texas Register* (40 TexReg 5995). The Board adopted the amended chapter on October 29, 2015, and the adoption notice was published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8191).

The department received no public comments on the proposed rulemaking during the 30-day comment period.

Relating to the review of 1 TAC Chapter 203, the department determined the reasons for initially adopting the chapter continue to exist.

The department's review of 1 TAC Chapter 203 is concluded.

TRD-201505765
Martin H. Zelinsky
General Counsel
Department of Information Services
Filed: December 18, 2015

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The Texas Department of Information Resources (the department/DIR) has completed its review of 1 Texas Administrative Code (TAC) Chapter 211, concerning Information Resources Managers, pursuant to the Texas Government Code §2001.039. DIR published a formal notice of rule review of Chapter 211 in the November 7, 2014, issue of the *Texas Register* (39 TexReg 8746).

As a result of the rule review, the department adopts amendments of 1 TAC 211. The department published the amended new chapter in the September 4, 2015, issue of the *Texas Register* (40 TexReg 5580). The Board adopted the amended chapter on October 29, 2015, and the adoption notice was published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8193).

The department received no public comments on the proposed rulemaking during the 30-day comment period.

Relating to the review of 1 TAC Chapter 211, the department determined the reasons for initially adopting the chapter continue to exist.

The department's review of 1 TAC Chapter 211 is concluded.

TRD-201505766
Martin H. Zelinsky
General Counsel
Department of Information Resources
Filed: December 18, 2015

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The Texas Department of Information Resources (the department/DIR) has completed its review of 1 Texas Administrative Code (TAC) Chapter 212, concerning Purchases of Commodity Items, pursuant to the Texas Government Code §2001.039. DIR published a formal notice of rule review of Chapter 212 in the June 19, 2015, issue of the *Texas Register* (40 TexReg 4011).

As a result of the rule review, the department adopts amendments to 1 TAC Chapter 212, §§212.1, 212.10, 212.11, 212.20, 212.30, and new rules 1 TAC Chapter 212, §§212.41, 212.42, 212.43, and 212.50. The department published the amended new chapter in the September 4, 2015, issue of the *Texas Register* (40 TexReg 5582). The Board adopted the amended chapter on October 29, 2015, and the adoption notice was published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8195).

The department received no public comments on the proposed rulemaking during the 30-day comment period.

Relating to the review of 1 TAC Chapter 212, the department determined the reasons for initially adopting the chapter continue to exist.

The department's review of 1 TAC Chapter 212 is concluded.

TRD-201505768
Martin H. Zelinsky
General Counsel
Department of Information Resources
Filed: December 18, 2015

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The Texas Department of Information Resources (the department/DIR) has completed its review of 1 Texas Administrative Code (TAC) Chapter 216, concerning Project Management Practices, pursuant to the Texas Government Code §2001.039. DIR published a formal notice of rule review of Chapter 216 in the September 12, 2014, issue of the *Texas Register* (39 TexReg 7355).

As a result of the rule review, the department adopts the repeal of 1TAC 216, §§ 216.2 and 216.3; adopts new §§ 216.2 and 216.3; and adopts amendments to 1 TAC Chapter 216, §§216.1, 216.10, 216.11, 216.12, 216.20, 216.21, and 216.22. The department published the amended new chapter in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6001). The Board adopted the amended chapter on October 29, 2015, and the adoption notice was published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8198).

The department received no public comments on the proposed rulemaking during the 30-day comment period.

Relating to the review of 1 TAC Chapter 216, the department determined the reasons for initially adopting the chapter continue to exist.

The department's review of 1 TAC Chapter 216 is concluded.

TRD-201505769
Martin H. Zelinsky
General Counsel
Department of Information Resources
Filed: December 18, 2015

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The Texas Department of Information Resources (the department/DIR) has completed its review of 1 Texas Administrative Code (TAC) Chapter 217, concerning Procurement of Information Resources, pursuant to the Texas Government Code §2001.039. DIR published a formal notice of rule review of Chapter 217 in the June 19, 2015, issue of the *Texas Register* (40 TexReg 4011).

As a result of the rule review, the department adopts amendments to 1 TAC Chapter 217, §§217.1, 217.2, and 217.3, and adopts a new rule §217.4 and 217.5. The department published the amended new chapter in the September 4, 2015, issue of the *Texas Register* (40 TexReg 5589). The Board adopted the amended chapter on October 29, 2015, and the adoption notice was published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8200).

The department received no public comments on the proposed rulemaking during the 30-day comment period.

Relating to the review of 1 TAC Chapter 217, the department determined the reasons for initially adopting the chapter continue to exist.

The department's review of 1 TAC Chapter 217 is concluded.

TRD-201505770
Martin H. Zelinsky
General Counsel
Department of Information Resources
Filed: December 18, 2015

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Texas Department of Savings and Mortgage Lending

Title 7, Part 4

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 51 (§§51.1 - 51.15) relating to Charter Applications.

Notice of the review of Chapter 51 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 51 in accordance with the requirements of the Texas Government Code §2001.039.

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 53 (§§53.1 - 53.5, 53.7 - 53.10, 53.17 - 53.18) relating to Additional Offices.

Notice of the review of Chapter 53 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 53 in accordance with the requirements of the Texas Government Code §2001.039.

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 57 (§§57.1 - 57.4) relating to Change of Office Location or Name.

Notice of the review of Chapter 57 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 57 in accordance with the requirements of the Texas Government Code §2001.039.

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 59 (§59.1) relating to Foreign Building and Loan Associations.

Notice of the review of Chapter 59 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 59 in accordance with the requirements of the Texas Government Code §2001.039.

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 61 (§§61.1 - 61.3) relating to Hearings.

Notice of the review of Chapter 61 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 61 in accordance with the requirements of the Texas Government Code §2001.039.

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 63 (§§63.1 - 63.15) relating to Fees and Charges.

Notice of the review of Chapter 63 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 63 in accordance with the requirements of the Texas Government Code §2001.039.

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 64 (§§64.1 - 64.10) relating to Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Consumer Complaints.

Notice of the review of Chapter 64 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 64 in accordance with the requirements of the Texas Government Code §2001.039.

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 65 (§§65.1 - 65.24) relating to Loans and Investments.

Notice of the review of Chapter 65 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 65 in accordance with the requirements of the Texas Government Code §2001.039.

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 67 (§§67.1 - 67.4, 67.6 - 67.15, 67.17) relating to Savings and Deposit Accounts.

Notice of the review of Chapter 67 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 67 in accordance with the requirements of the Texas Government Code §2001.039.

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 69 (§§69.1 - 69.11) relating to Reorganization, Merger, Consolidation, Acquisition, and Conversion.

Notice of the review of Chapter 69 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 69 in accordance with the requirements of the Texas Government Code §2001.039.

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 71 (§§71.1 - 71.8) relating to Change of Control.

Notice of the review of Chapter 71 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 71 in accordance with the requirements of the Texas Government Code §2001.039.

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 73 (§§73.1 - 73.6) relating to Subsidiary Corporations.

Notice of the review of Chapter 73 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 73 in accordance with the requirements of the Texas Government Code §2001.039.

TRD-201505759
Ernest C. Garcia
General Counsel
Texas Department of Savings and Mortgage Lending
Filed: December 18, 2015

On behalf of the Finance Commission of Texas (commission), the Texas Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 75 Subchapter A (§§75.1 - 75.10) relating to Charter Applications; Subchapter B (§§75.25 - 75.27) relating to Expedited Applications; Subchapter C (§§75.31 - 75.36, 75.38 - 75.39, 75.41) relating to Additional Offices; Subchapter D (§§75.81 - 5.91) relating to Reorganization, Merger, Consolidation, Conversion, Purchase, and Assumption and Acquisition; and Subchapter E (§§75.121 - 75.127) relating to Change of Control.

Notice of the review of Chapter 75 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 75 in accordance with the requirements of the Texas Government Code §2001.039.

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 76, Subchapter A (§§76.1 - 76.7, 76.12) relating to Books, Records, Accounting Practices, Financial Statements and Reserves; Subchapter B (§§76.21 - 76.26) relating to Capital and Capital Obligations; Subchapter C (§§76.41 - 76.47) relating to Holding Companies; Subchapter D (§76.61) relating to Foreign Savings Banks; Subchapter E (§§76.71 - 76.73) relating to Hearings; Subchapter F (§§76.91 - 76.103, 76.105 - 76.110) relating to Fees and Charges; Subchapter G (§76.121) relating to Statements of Policy; and Subchapter H (§§76.122) relating to Consumer Complaint Procedures.

Notice of the review of Chapter 76 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 76 in accordance with the requirements of the Texas Government Code §2001.039.

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 77, Subchapter A (§§77.1 - 77.11, 77.31, 77.33, 77.35, 77.51, 77.71, 77.73, 77.91 - 77.96) relating to Authorized Loans and Investments, and Subchapter B (§§77.115 - 77.116) relating to Savings and Deposits.

Notice of the review of Chapter 77 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 77 in accordance with the requirements of the Texas Government Code §2001.039.

TRD-201505761
Ernest C. Garcia
General Counsel
Texas Department of Savings and Mortgage Lending
Filed: December 18, 2015

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: 7 TAC §83.6007(a)

CAB NAME HERE

Payday Loan

$500, One Payment

Cost Disclosure

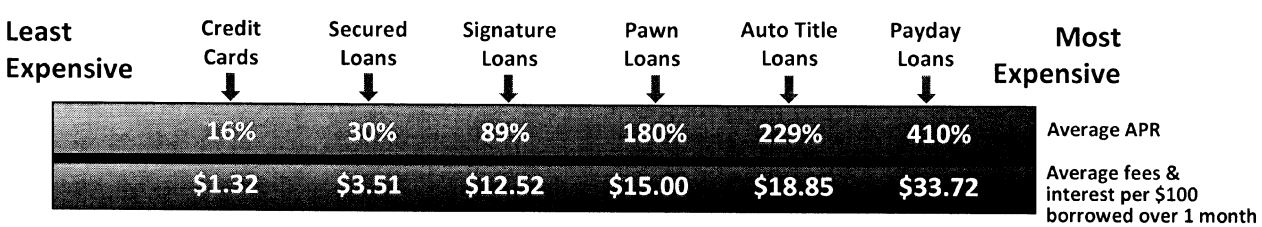
Cost of this loan:

Borrowed amount (cash advance)	$ 500.00
Interest paid to lender (interest rate: 10 %)	$ 2.40
Fees paid to CAB name here	$ 125.00
Total of payments (if I pay on time)	$ 627.40

APR (cost of credit as a yearly rate)	664.30 %
Term of loan	2 weeks

If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	$127.40	$627.40
1 Month	$254.80	$754.80
2 Months	$509.60	$1,009.60
3 Months	$734.40	$1,234.40

Cost of other types of loans:



Repayment:

Of 10 people who get a new single-payment payday loan:	
	3½ will pay the loan on time as scheduled (typically 30 days)
	1 will renew 1 time before paying off the loan
	2 will renew 2 to 4 times before paying off the loan
	3 ½ will renew 5 or more times or will never pay off the loan

This data is from 2014 reports to the OCCC.

Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan ***in full*** when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, consumer.complaints@occc.texas.gov.
- Visit occc.texas.gov for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

Figure: 7 TAC §83.6007(b)

CAB NAME HERE

Payday Loan

$500, 10 Payments

Cost Disclosure

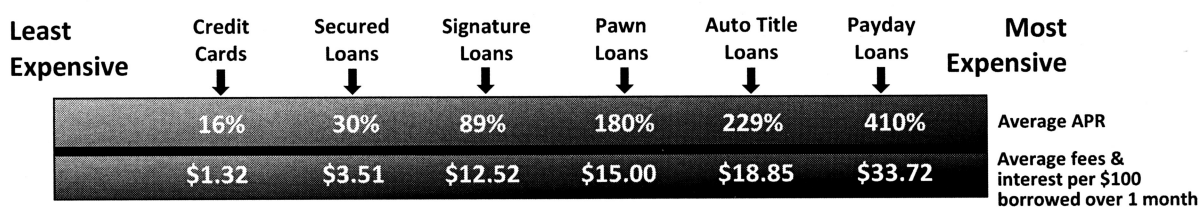
Cost of this loan:

Borrowed amount (cash advance)	$ 500.00
Interest paid to lender (interest rate: 10 %)	$ 26.00
Fees paid to CAB name here	$ 775.00
Payment amounts (payments due every 2 weeks)	Payments #1-#9 $ 136.24 (Final) Payment #10 $ 74.84
Total of payments (if I pay on time)	$ 1,301.00

APR (cost of credit as a yearly rate)	614.51 %
Term of loan	20 weeks

If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	$ 779.89	$ 1,279.89
1 Month	$ 784.28	$ 1,284.28
2 Months	$ 791.53	$ 1,291.53
3 Months	$ 796.74	$ 1,296.74
20 Weeks	$ 801.00	$ 1,301.00

Cost of other types of loans:



Repayment:

Of 10 people who get a new multi-payment payday loan:	
	7 will pay the loan on time as scheduled (typically 5 months)
	1 will renew 1 to 4 times before paying off the loan
	2 will renew 5 or more times or will never pay off the loan.

This data is from 2014 reports to the OCCC.

Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan ***in full*** when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, consumer.complaints@occc.texas.gov.
- Visit occc.texas.gov for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

Figure: 7 TAC §83.6007(c)

CAB NAME HERE

Auto Title Loan
$ 500 , One Payment
Cost Disclosure

You can lose your car.
If you miss a payment or make a late payment, your car can be repossessed.

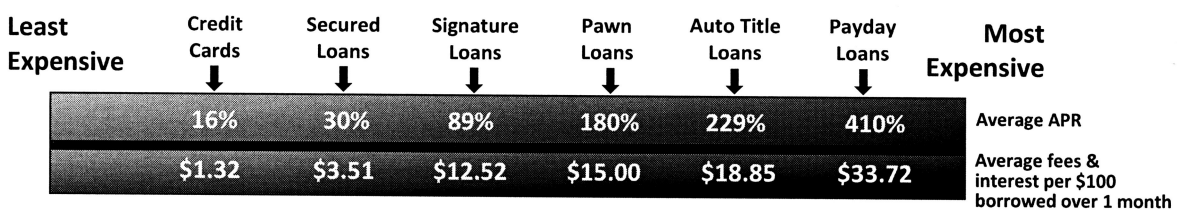
Cost of this loan:

Borrowed amount (cash advance)	$ 500.00
Interest paid to lender (interest rate: 10 %)	$ 5.41
Fees paid to CAB name here (includes a one-time $ 33 title fee)	$ 158.00
Total of payments (if I pay on time)	$ 663.41

APR (cost of credit as a yearly rate)	297.68 %
Term of loan	1 month

If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	$ 160.52	$ 660.52
1 Month	$ 163.41	$ 663.41
2 Months	$ 293.61	$ 793.61
3 Months	$ 423.81	$ 923.81

Cost of other types of loans:



Repayment:

Of 10 people who get a new multi-payment auto title loan:	
	3 will pay the loan on time as scheduled (typically 30 days)
	1 will renew 1 time before paying off the loan
	1½ will renew 2 to 4 times before paying off the loan
	4 ½ will renew 5 or more times or will never pay off the loan

This data is from 2014 reports to the OCCC.

Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan ***in full*** when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, consumer.complaints@occc.texas.gov.
- Visit occc.texas.gov for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

Figure: 7 TAC §83.6007(d)

CAB NAME HERE

Auto Title Loan
$500, 11 Payments
Cost Disclosure

You can lose your car.
If you miss a payment or make a late payment, your car can be repossessed.

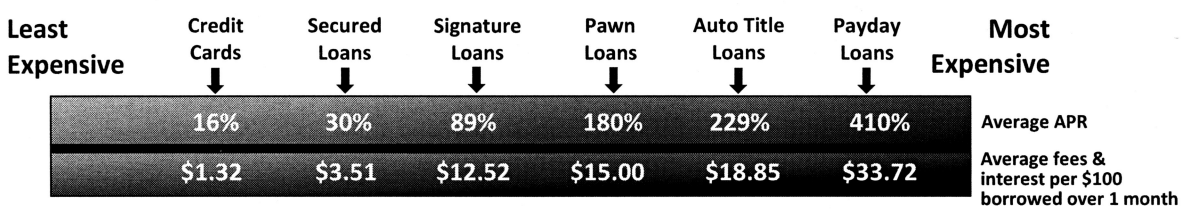
Cost of this loan:

Borrowed amount (cash advance)	$ 500.00
Interest paid to lender (interest rate: 10 %)	$ 30.29
Fees paid to CAB name here (includes a one-time $ 33 title fee)	$ 868.00
Payment amounts (payments due every 2 weeks)	Payments #1-# 10 $ 132.45 (Final) Payment 11 $ 74.07
Total of payments (if I pay on time)	$ 1,398.57

APR (cost of credit as a yearly rate)	564.57	%
Term of Loan	22 weeks	

If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	$ 873.25	$ 1,373.25
1 Month	$ 878.01	$ 1,378.01
2 Months	$ 886.06	$ 1,386.06
3 Months	$ 892.13	$ 1,392.13
22 Weeks	$ 898.29	$ 1,398.57

Cost of other types of loans:



Repayment:

Of 10 people who get a new multi-payment auto title loan:	
	5 ½ will pay the loan on time as scheduled (typically 6 months)
	1 will renew 1 time before paying off the loan
	1 will renew 2 to 4 times before paying off the loan
	2 ½ will renew 5 or more times or will never pay off the loan

This data is from 2014 reports to the OCCC.

Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan ***in full*** when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, consumer.complaints@occc.texas.gov.
- Visit occc.texas.gov for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

Figure: 10 TAC §10.614(e)(3)

Method	**Beginning of 90 Day Notification Period**
Written Local Estimate	Date of letter from the Utility Provider
HUD Utility Schedule Model	Date entered as "Form Date"
Energy Consumption Model	60 days after the end of the last month of the 12 month period for which data was used to compute the estimate
Actual Use Method	Date the allowance is approved by the Department

Figure: 10 TAC §11.2

Deadline	Documentation Required
01/04/2016	Application Acceptance Period Begins.
01/08/2016	Pre-Application Final Delivery Date (including waiver requests).
03/01/2016	Full Application Delivery Date (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Property Condition Assessments (PCAs); Appraisals; Primary Market Area Map; Site Design and Development Feasibility Report; all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors). 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).
04/01/2016	Market Analysis Delivery Date pursuant to §10.205 of this title.
Mid-May	Final Scoring Notices Issued for Majority of Applications Considered "Competitive."
June	Release of Eligible Applications for Consideration for Award in July.
July	Final Awards.
Mid-August	Commitments are Issued.
11/01/2016	Carryover Documentation Delivery Date.
06/30/2017	10 Percent Test Documentation Delivery Date.
12/31/2018	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: 19 TAC §101.3041(b)(1)

English: State of Texas Assessments of Academic Readiness Grades 3-8 Assessments Performance Standards

English Assessments	2015-2016 Standard	2016-2017 Standard	2017-2018 Standard	2018-2019 Standard	2019-2020 Standard	2020-2021 Standard	2021-2022 Recommended Level II	Recommended Level III
Grade 3 Mathematics	1360	1381	1402	1423	1444	1465	1486	1596
Grade 4 Mathematics	1467	1487	1507	1528	1548	1569	1589	1670
Grade 5 Mathematics	1500	1521	1542	1563	1583	1604	1625	1724
Grade 6 Mathematics	1536	1556	1575	1595	1614	1634	1653	1772
Grade 7 Mathematics	1575	1594	1613	1631	1650	1669	1688	1798
Grade 8 Mathematics	1595	1612	1630	1647	1665	1682	1700	1854
Grade 3 Reading	1345	1365	1386	1406	1427	1447	1468	1555
Grade 4 Reading	1434	1454	1473	1492	1511	1531	1550	1633
Grade 5 Reading	1470	1489	1508	1526	1545	1563	1582	1667
Grade 6 Reading	1517	1536	1554	1573	1592	1610	1629	1718
Grade 7 Reading	1567	1585	1603	1621	1638	1656	1674	1753
Grade 8 Reading	1587	1606	1625	1643	1662	1681	1700	1783
Grade 4 Writing	3550	3625	3700	3775	3850	3925	4000	4612
Grade 7 Writing	3550	3625	3700	3775	3850	3925	4000	4602
Grade 5 Science	3550	3625	3700	3775	3850	3925	4000	4402

English Assessments	2015-2016 Standard	2016-2017 Standard	2017-2018 Standard	2018-2019 Standard	2019-2020 Standard	2020-2021 Standard	2021-2022 Recommended Level II	Recommended Level III
Grade 8 Science	3550	3625	3700	3775	3850	3925	4000	4406
Grade 8 Social Studies	3550	3625	3700	3775	3850	3925	4000	4268

Spanish: State of Texas Assessments of Academic Readiness Grades 3-8 Assessments Performance Standards

Spanish Assessments	2015-2016 Standard	2016-2017 Standard	2017-2018 Standard	2018-2019 Standard	2019-2020 Standard	2020-2021 Standard	2021-2022 Recommended Level II	Recommended Level III
Grade 3 Mathematics	1360	1381	1402	1423	1444	1465	1486	1596
Grade 4 Mathematics	1467	1487	1507	1528	1548	1569	1589	1670
Grade 5 Mathematics	1500	1521	1542	1563	1583	1604	1625	1724
Grade 3 Reading	1318	1339	1360	1381	1402	1423	1444	1532
Grade 4 Reading	1413	1434	1455	1476	1497	1518	1539	1636
Grade 5 Reading	1461	1481	1501	1522	1542	1562	1582	1701
Grade 4 Writing	3550	3625	3700	3775	3850	3925	4000	4543
Grade 5 Science	3550	3625	3700	3775	3850	3925	4000	4402

Figure: 19 TAC §101.3041(b)(2)

State of Texas Assessments of Academic Readiness Alternate Grades 3-8 Assessments Conversion Table
Reading, Writing, Mathematics, Science, and Social Studies

Assessment	Level I: Developing Academic Performance	Level II: Satisfactory Academic Performance	Level III: Accomplished Academic Performance
Grade 3 Reading	< 300	300	381
Grade 4 Reading	< 300	300	384
Grade 5 Reading	< 300	300	387
Grade 6 Reading	< 300	300	371
Grade 7 Reading	< 300	300	371
Grade 8 Reading	< 300	300	379
Grade 3 Mathematics	< 300	300	375
Grade 4 Mathematics	< 300	300	387
Grade 5 Mathematics	< 300	300	379
Grade 6 Mathematics	< 300	300	373
Grade 7 Mathematics	< 300	300	375
Grade 8 Mathematics	< 300	300	365
Grade 4 Writing	< 300	300	363
Grade 7 Writing	< 300	300	359
Grade 5 Science	< 300	300	387
Grade 8 Science	< 300	300	382
Grade 8 Social Studies	< 300	300	372

Figure: 19 TAC §101.3041(c)(1)

State of Texas Assessments of Academic Readiness End-of-Course Assessments Performance Standards*

Assessment	2015-2016 Standard	2016-2017 Standard	2017-2018 Standard	2018-2019 Standard	2019-2020 Standard	2020-2021 Standard	2021-2022 Recommended Level II	Recommended Level III
Algebra I	3550	3625	3700	3775	3850	3925	4000	4333
Biology	3550	3625	3700	3775	3850	3925	4000	4576
English I	3775	3813	3850	3888	3925	3963	4000	4691
English II	3775	3813	3850	3888	3925	3963	4000	4831
U.S. History	3550	3625	3700	3775	3850	3925	4000	4440

* The standard in place when a student first takes an EOC assessment is the standard that will be maintained throughout the student's school career. Standards apply beginning with students first enrolled in Grade 9 or below in 2011-2012.

Figure: 19 TAC §101.3041(c)(2)

State of Texas Assessments of Academic Readiness Alternate End-of-Course Assessments Conversion Table
Algebra I, Biology, English I, English II, and U.S. History

Assessment	Level I: Developing Academic Performance	Level II: Satisfactory Academic Performance	Level III: Accomplished Academic Performance
Algebra I	< 300	300	361
Biology	< 300	300	383
English I	< 300	300	367
English II	< 300	300	366
U.S. History	< 300	300	368

Figure: 43 TAC §21.41(c)

Horizontal Clearances[1]					
Location	**Functional Classification**	**Design Speed (mph)**	**Avg. Daily Traffic[2]**	**Clear Zone Width (ft)[3,4,5]**	
-	-	-	-	**Minimum**	**Desirable**
Rural	Freeways	All	All	30 (16 for ramps)	
Rural	Arterial	All	0-750 750 – 1500 > 1500	10 16 30	16 30 -
Rural	Collector	≥ 50	All	Use above rural arterial criteria.	
Rural	Collector	≤ 45	All	10	-
Rural	Local	All	All	10	-
Suburban	All	All	< 8,000	10[6]	10[6]
Suburban	All	All	8,000 – 12,000	10[6]	20[6]
Suburban	All	All	12,000 – 16,000	10[6]	25[6]
Suburban	All	All	> 16,000	20[6]	30[6]
Urban	Freeways	All	All	30 (16 for ramps)	
Urban	All (Curbed)	≥ 50	All	Use above suburban criteria insofar as available border width permits.	
Urban	All (Curbed)	≤ 45	All	4 from curb face	6
Urban	All (Uncurbed)	≥ 50	All	Use above suburban criteria.	
Urban	All (Uncurbed)	≤ 45	All	10	-

[1] Because of the need for specific placement to assist traffic operations, devices such as traffic signal supports, railroad signal/warning device supports, and controller cabinets are excluded from clear zone requirements. However, these devices should be located as far from the travel lanes as practical. Other non-breakaway devices should be located outside the prescribed clear zone or these devices should be protected with barrier.

[2] Average ADT over project life, i.e., 0.5 (present ADT plus future ADT). Use total ADT on two-way roadways and directional ADT on one-way roadways.

[3] Without barrier or other safety treatment of appurtenances.

[4] Measured from edge of travel lane for all cut sections and for all fill sections where side slopes are 1V:4H or flatter. Where fill slopes are steeper than 1V:4H it is desirable to provide a 10 ft area free of obstacles beyond the toe of slope.

[5] Desirable, rather than minimum, values should be used where feasible.

[6] Purchase of 5 ft or less of additional right-of-way strictly for satisfying clear zone provisions is not required.

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas 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 February 1, 2016. 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 February 1, 2016. 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: City of Beaumont; DOCKET NUMBER: 2015-1468-PWS-E; IDENTIFIER: RN101253094; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notification to the customers of the facility within 24 hours of a low pressure event or water outage using the prescribed format in 30 TAC §290.47(e); and 30 TAC §290.39(i) and (j), by failing to submit any addenda or change orders that involve a health hazard or relocation of facilities to the executive director for review and approval and failing to obtain approval of the executive director before changing an existing disinfection process at a surface water treatment plant; PENALTY: $450; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: City of Lacy Lakeview; DOCKET NUMBER: 2015-1533-WQ-E; IDENTIFIER: RN105559736; LOCATION: Lacy Lakeview, McLennan County; TYPE OF FACILITY: municipal storm sewer system; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(a)(9)(i)(A), by failing to maintain authorization to discharge stormwater associated with a Texas Pollutant Discharge Elimination System General Permit for Small Municipal Separate Storm Sewer Systems; PENALTY: $20,000; ENFORCEMENT COORDINATOR: Larry Butler, (512) 239-2543; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: City of Richland Springs; DOCKET NUMBER: 2015-1359-MWD-E; IDENTIFIER: RN103016325; LOCATION: Richland Springs, San Saba County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §305.42(a), by failing to obtain authorization to discharge municipal waste into or adjacent to water in the state; PENALTY: $2,250; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: GARY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2015-1566-PWS-E; IDENTIFIER: RN101436004; LOCATION: Gary, Panola County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $366; ENFORCEMENT COORDINATOR: Sarah Kim, (512) 239-4728; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: Golay Brothers, LLC. dba Indian Creek Mart; DOCKET NUMBER: 2015-1191-PST-E; IDENTIFIER: RN102483864; LOCATION: Tyler, Smith 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 (not to exceed 35 days between each monitoring), and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,457; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: Howard C. Bigham Jr. dba Key Mobile Home Park; DOCKET NUMBER: 2015-1365-PWS-E; IDENTIFIER: RN101246262; LOCATION: Snyder, Scurry County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification or submit a copy of the public notification to the executive director regarding the failure to submit a Disinfectant Level Quarterly Operating Report and the failure to collect lead and copper tap samples; PENALTY: $855; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(7) COMPANY: HPP Materials, Incorporated; DOCKET NUMBER: 2015-1425-WQ-E; IDENTIFIER: RN106350549; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities contin-

ued; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: James Construction Group LLC (FC); DOCKET NUMBER: 2015-1759-WR-E; IDENTIFIER: RN108785726; LOCATION: Navastoa, Grimes County; TYPE OF FACILITY: construction site; RULE VIOLATED: TWC, §11.081 and §11.121, by failing to impound, divert or use state water with a required permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: K and K Construction, Incorporated; DOCKET NUMBER: 2015-0782-AIR-E; IDENTIFIER: RN105742704; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: air curtain incinerator; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(1) and (2), Texas Health and Safety Code (THSC), §382.085(b), and General Operating Permit (GOP) Number 518/Federal Operating Permit (FOP) Number O3299, Terms and Conditions (b)(4)(D) and (9), by failing to certify compliance for at least each 12-month period following initial permit issuance; 30 TAC §122.143(4) and §122.145(2)(C), THSC, §382.085(b), and GOP Number 518/FOP Number O3299, Terms and Conditions (b)(4)(C), by failing to submit a deviation report no later than 30 days after the end of each reporting period; 30 TAC §116.110(a), TCEQ Order Docket Number 2013-0247-MLM-E, Ordering Provisions Numbers 2.a., 2.c., and 2.d., and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization to operate a source of air emissions; and 30 TAC §122.121 and THSC, §382.054 and §382.085(b), by failing to obtain a FOP; PENALTY: $11,431; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Kenneth Patrick Whittlesey and WKP ENTERPRISES, INCORPORATED; DOCKET NUMBER: 2015-0095-EAQ-E; IDENTIFIER: RN101499879; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: landscape supply site; RULES VIOLATED: 30 TAC §213.4(a)(1) and §213.5(a)(4), by failing to obtain authorization prior to commencing regulated activities over the Edwards Aquifer Recharge Zone; PENALTY: $45,900; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(11) COMPANY: Kirby Stone Company, LLC; DOCKET NUMBER: 2015-1265-WQ-E; IDENTIFIER: RN105274559; LOCATION: Salado, Bell County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Larry G. Rodgers dba Hidden Lake RV Ranch and Safari and Vickie L. Rodgers dba Hidden Lake RV Ranch and Safari; DOCKET NUMBER: 2015-1362-PWS-E; IDENTIFIER: RN107702425; LOCATION: Jacksboro, Jack County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(f)(3) and Texas Health and Safety Code, §341.031(a), by failing to comply with the maximum contaminant level for total coliform during the month of June 2015; 30 TAC §290.109(c)(3)(A)(ii), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result on a routine coliform sample collected for the month of May 2015; 30 TAC §290.122(c)(2)(A) and (f), by failing to timely issue public notification and submit a copy of the public notification to the executive director for the failure to collect routine coliform monitoring samples for the month of February 2015; PENALTY: $588; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(13) COMPANY: NOCONA HILLS OWNERS ASSOCIATION; DOCKET NUMBER: 2015-1197-MLM-E; IDENTIFIER: RN105982631; LOCATION: Nocona, Montague County; TYPE OF FACILITY: unauthorized waste disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; and 30 TAC §111.201 and Texas Health and Safety Code, §382.085(b), by failing to not cause, suffer, allow, or permit outdoor burning within the state of Texas; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(14) COMPANY: North Alamo Water Supply Corporation; DOCKET NUMBER: 2015-1318-PWS-E; IDENTIFIER: RN101247922; LOCATION: Edinburg, Hidalgo County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $690; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(15) COMPANY: TEXAS CRUSHED STONE COMPANY; DOCKET NUMBER: 2015-1571-WQ-E; IDENTIFIER: RN102016482; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(16) COMPANY: TexRock Industries, LLC; DOCKET NUMBER: 2015-1270-WQ-E; IDENTIFIER: RN106336704; LOCATION: Breckenridge, Stephens County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: $10,000; Supplemental Environmental Project offset amount of $4,000; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(17) COMPANY: Total Petrochemicals and Refining USA, Incorporated; DOCKET NUMBER: 2015-1184-AIR-E; IDENTIFIER: RN102457520; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O1267, Special Terms and Conditions (STC) Number 29, and New Source Review (NSR) Permit Numbers 46396, PSDTX1073M2, and N044, Special Conditions (SC) Number 11, by failing to comply with the emissions limits for the Delayed Coker Unit Heater Number 2, Emission Point Number (EPN) 30CKRHTR2; 30 TAC §§101.20(3), 116.115(c), 117.105(a)(1), and 122.143(4), THSC, §382.085(b), FOP Number O1267, STC Numbers 1A and 29, and NSR Permit Numbers 46396, PSDTX1073M2, and N044, SC Number 12, by failing to comply with the nitrogen oxide concentration limit for the Cogeneration Unit, EPN 60COGENSTK; 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), THSC, §382.085(b), FOP Number O1267, STC Number 29, and NSR Permit Numbers 46396, PSDTX1073M2,

and N044, SC Number 1, by failing to comply with the maximum allowable emissions rate for the charge heater, EPN LAERCNQFUG; 30 TAC §101.201(a)(1)(B) and §122.143(4), THSC, §382.085(b), and FOP Number O1267, STC Number 2F, by failing to submit the initial notification for a reportable emissions event within 24 hours of discovery; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), THSC, §382.085(b), FOP Number O1267, STC Number 29, and NSR Permit Numbers 46396, PSDTX1073M2, and N044, SC Number 39, by failing to conduct weekly sampling for total dissolved solids; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), THSC, §382.085(b), FOP Number O1267, STC Number 29, and NSR Permit Numbers 46396, PSDTX1073M2, and N044, SC Number 1, by failing to prevent unauthorized emissions; PENALTY: $113,354; Supplemental Environmental Project offset amount of $45,342; ENFORCEMENT COORDINATOR: Jennifer Nguyen, (512) 239-6160; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: Total Petrochemicals and Refining USA, Incorporated; DOCKET NUMBER: 2015-1302-AIR-E; IDENTIFIER: RN102457520; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit O1267, Special Terms and Conditions Number 29, and New Source Review Permit Numbers 46396, PSDTX1073M2, and N044, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: $65,000; Supplemental Environmental Project offset amount of $32,500; ENFORCEMENT COORDINATOR: Jennifer Nguyen, (512) 239-6160; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-201505696
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 16, 2015

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Notice of Correction to Agreed Order Number 5

In the October 23, 2015, issue of the *Texas Register* (40 TexReg 7456), the Texas Commission on Environmental Quality published notice of Agreed Orders, specifically item Number 5, for Blattner Energy, Incorporated. The reference to the identifier should be corrected to read: RN107103145.

For questions concerning this error, please contact Candy Garrett at (512) 239-1456.

TRD-201505697
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 16, 2015

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Notice of Hearing - Coastal Ready Mix, Inc.

SOAH Docket No. 582-16-1441

TCEQ Docket No. 2015-1263-AIR

Proposed Registration No. 123775

APPLICATION. Coastal Ready Mix, Inc., P.O. Box 20, Sour Lake, Texas 77659-0020, has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant, Registration Number 123775, which would authorize construction of a permanent concrete batch plant under Title 30 Texas Administrative Code §116.611 (30 TAC §116.611) near Kountze, Hardin County, Texas 77625. The following driving directions were provided: from the intersection at Wheeler Road and Highway 69 travel north 4.4 miles, property on east side of Highway 69. The proposed facility will emit the following air contaminants: particulate matter including (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less.

The TCEQ executive director has determined that the application meets all of the requirements of a Standard Permit authorized by 30 TAC §16.611 which would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision to issue the registration because it meets all rules and regulations. The permit application, executive director's preliminary decision, and standard permit will be available for viewing and copying at the TCEQ central office, the TCEQ Beaumont regional office, and the Lumberton Public Library, 130 East Chance Road, Lumberton, Hardin County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas.

CONTESTED CASE HEARING. The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. - January 26, 2016

Hardin County Courthouse

300 Monroe Street - 2nd Floor

Kountze, Texas 77625

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on November 10, 2015. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with the Chapter 2001, Texas Government Code; Chapter 382, Texas Health and Safety Code; TCEQ rules including 30 Texas Administrative Code (TAC) Chapter 116, Subchapters A and B; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be affected by the application in a way not common to the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

MAILING LIST. You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION.

Public comments and requests must be submitted either electronically at www.tceq.texas.gov/goto/comments, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application, the permitting process, or the contested case hearing process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800)

687-4040. General information regarding the TCEQ may be obtained electronically at http://www.tceq.texas.gov.

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687 4040. General information regarding the TCEQ can be found at http://www.tceq.texas.gov/.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Further information may also be obtained from Coastal Ready Mix, Inc. at the address stated above or by calling Mr. Gary Whitman, President at (409) 287-3307.

Issued: December 18, 2015

TRD-201505801
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 18, 2015

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Notice of Opportunity to Comment on Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 1, 2016.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 1, 2016.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DO and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DO shall be submitted to the commission in **writing.**

(1) COMPANY: George Pierson; DOCKET NUMBER: 2015-0235-MSW-E; TCEQ ID NUMBER: RN107554925; LOCATION: 413 Chest Street, Grapeland, Houston County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) dump; RULE VIOLATED: 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: $1,312; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201505695
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 16, 2015

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Hub City Convenience Stores, Inc. DBA Chisum 35

SOAH Docket No. 582-16-1310

TCEQ Docket No. 2015-0904-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - January 14, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed October 14, 2015 concerning assessing administrative penalties against and requiring certain actions of Hub City Convenience Stores, Inc. dba Chisum 35, for violations in Hockley County, Texas, of: Texas Water Code §§26.3475(c)(1) and (c)(2) and 30 TAC §§334.50(b)(1)(A), 334.51(a)(6), 334.72, and 334.74.

The hearing will allow Hub City Convenience Stores, Inc. dba Chisum 35, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Hub City Convenience Stores, Inc. dba Chisum 35, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of Hub City Convenience Stores, Inc. dba Chisum 35 to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. Hub City Convenience Stores, Inc. dba Chisum 35, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and Texas Water Code chs. 7 and 26 and 30 Texas Administrative Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 TAC §§70.108 and 70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Ryan Rutledge, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at http://www.tceq.texas.gov/goto/eFilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: December 14, 2015

TRD-201505684
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 16, 2015

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Alamo Commercial Properties, LTD.

SOAH Docket No. 582-16-1401

TCEQ Docket No. 2014-1503-MLM-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - January 14, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed June 29, 2015 concerning assessing administrative penalties against and requiring certain actions of Alamo Commercial Properties, Ltd., for violations in Bexar County, Texas, of: 40 C.F.R. §§264.147, 265.173, 270.1(c), 273.14(a), 279.22(a), and 279.22(c)(1); Texas Water Code §26.121(a); and 30 TAC §§37.111, 324.1, 328.26(a), 330.15(c), 335.2(a), 335.4, 335.261(b), and 350.32(d).

The hearing will allow Alamo Commercial Properties, Ltd., the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Alamo Commercial Properties, Ltd., the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of Alamo Commercial Properties, Ltd. to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. Alamo Commercial Properties, Ltd., the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and chs. 7 and 26, Texas Health & Safety Code chs. 361 and 371, and 30 Texas Administrative Code chs. 37, 70, 324, 328, 330, 335, and 350; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 TAC §§70.108 and 70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting David A. Terry, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at http://www.tceq.texas.gov/goto/eFilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: December 14, 2015

TRD-201505685
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 16, 2015

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Trident Environmental Resource Consulting, LLC

SOAH Docket No. 582-16-1456

TCEQ Docket No. 2015-0067-MSW-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - January 14, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed July 2, 2015 concerning assessing administrative penalties against and requiring certain actions of Trident Environmental Resource Consulting, LLC, for violations in Fannin County, Texas, of: 30 TAC §328.63(c).

The hearing will allow Trident Environmental Resource Consulting, LLC, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Trident Environmental Resource Consulting, LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of Trident Environmental Resource Consulting, LLC to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. Trident Environmental Resource Consulting, LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and ch. 7, Texas Health & Safety Code ch. 361, and 30 Texas Administrative Code chs. 70 and 328; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 TAC §§70.108 and 70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting J. Amber Ahmed, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at http://www.tceq.texas.gov/goto/eFilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: December 16, 2015

TRD-201505689
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 16, 2015

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Servando Rivera

SOAH Docket No. 582-16-1574

TCEQ Docket No. 2015-0150-MLM-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - January 21, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed October 9, 2015 concerning assessing administrative penalties against and requiring certain actions of Servando Rivera, for violations in Hidalgo County, Texas, of: Tex. Health & Safety Code §382.085(b); 30 Tex. Admin. Code §§111.201, 122.143(14), 122.145(2)(B) and (C), 122.146(1) and 330.15(c); and Federal Operating Permit ("FOP") No. 03447/General Operating Permit ("GOP") No. 518, Terms and Conditions Nos. (b)(4)(B)(ii), (b)(4)(C)(ii), and (b)(4)(D).

The hearing will allow Servando Rivera, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Servando Rivera, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of Servando Rivera to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. Servando Rivera, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and ch. 7, Tex. Health & Safety Code chs. 361 and 382, and 30 Tex. Admin. Code chs. 70, 111, 122 and 330; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office

of Administrative Hearings, including 30 Tex. Admin. Code §§70.108 and 70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Elizabeth Harkrider, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at http://www.tceq.texas.gov/goto/eFilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: December 17, 2015

TRD-201505796
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 18, 2015

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Gloria Food Mart Inc d/b/a/ Gloria Food Mart

SOAH Docket No. 582-16-1575

TCEQ Docket No. 2014-1837-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - January 14, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed September 11, 2015, concerning assessing administrative penalties against and requiring certain actions of GLORIA FOOD MART INC d/b/a Gloria Food Mart, for violations in Bexar County, Texas, of: Texas Water Code §26.3475 (a) and 30 Texas Administrative Code §§334.50(d)(9)(A)(v) and (b)(2), 334.72 and 334.74.

The hearing will allow GLORIA FOOD MART INC d/b/a Gloria Food Mart, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford GLORIA FOOD MART INC d/b/a Gloria Food Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of GLORIA FOOD MART INC d/b/a Gloria Food Mart to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. GLORIA FOOD MART INC d/b/a Gloria Food Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and chs. 7 and 26 and 30 Texas Administrative Code chs 70 and 334; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Elizabeth Harkrider, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at http://www.tceq.texas.gov/goto/eFilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: December 17, 2015

TRD-201505799
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 18, 2015

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Joseph Wells and Ruby Demby

SOAH Docket No. 582-16-1497

TCEQ Docket No. 2015-0457-MSW-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative

Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - January 14, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed July 21, 2015, concerning assessing administrative penalties against and requiring certain actions of Joseph Wells and Ruby Demby, for violations in Tarrant County, Texas, of: 30 Texas Administrative Code §330.15(c).

The hearing will allow Joseph Wells and Rudy Demby, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Joseph Wells and Ruby Demby, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of Joseph Wells and Ruby Demby to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. Joseph Wells and Ruby Demby, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and ch. 7, Texas Health & Safety Code ch. 361, and 30 Texas Administrative Code chs. 70 and 330; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Jake Marx, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at http://www.tceq.texas.gov/goto/eFilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: December 15, 2015

TRD-201505802
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 18, 2015

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Notice of Public Meeting for TPDES Permit for Industrial Wastewater Amendment Permit Number WQ0004086000

APPLICATION. Clean Harbors San Leon, Inc., 2700 Avenue S, San Leon, Texas 77539, which operates the Clean Harbors Recycling Facility, a recycling and storage facility that handles oily waste from the petroleum refining and petrochemical industries, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004086000 to authorize the discharge of treated process wastewater and treated contaminated stormwater at a daily average flow not to exceed 105,000 gallons per day via proposed internal Outfall 101. The draft permit authorizes the discharge of stormwater associated with industrial activity and previously monitored effluent (from internal Outfall 101) on an intermittent and flow-variable basis via Outfall 001.

The facility is located at 2700 Avenue S, near the intersection of 27th Street and Avenue S, approximately 3/4 mile east of State Highway 146 at Dickinson Bayou, in San Leon, Galveston County, Texas 77539. The effluent is discharged to a drainage ditch; thence to an unnamed tidal tributary of Dickinson Bayou Tidal; thence to Dickinson Bayou Tidal in Segment No. 1103 of the San Jacinto-Brazos Coastal Basin. The unclassified receiving waters have minimal aquatic life use for the unnamed ditch and high aquatic life use for the unnamed tidal tributary. The designated uses for Segment No. 1103 are high aquatic life use and primary contact recreation.

In accordance with Title 30 Texas Administrative Code Section 307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in the unnamed tidal tributary or Dickinson Bayou, which have been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the General Land Office and has determined that the action is consistent with the applicable CMP goals and policies. This 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. For the exact location, refer to the application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.469722&lng=-94.966666&zoom=13&type=r

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT/PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and

a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Monday, January 25, 2016 at 7:00 PM

Johnson Community Center

4102 Main Street

La Marque, Texas 77568

INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/about/comments.html. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1 (800) 687-4040. *Si desea información en español, puede llamar 1 (800) 687-4040.* General information about the TCEQ can be found at our web site at www.tceq.texas.gov.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Dickinson Public Library, 4411 Highway 3, Dickinson, Texas. Further information may also be obtained from Clean Harbors San Leon, Inc. at the address stated above or by calling Mr. Bruce Riffel, Senior Compliance Manager, at (281) 930-2412.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or 1 (800) RELAY-TX (TDD) at least one week prior to the meeting.

TRD-201505687
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 16, 2015

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Revised Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Major Amendment Proposed Permit Number 2256a

APPLICATION. Southwaste Disposal, LLC, 9575 Katy Freeway, Suite 130, Houston, Harris County, Texas 77024, owner and operator of a liquid waste processing facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Type V permit major amendment. The major amendment requests authorization to increase the permitted processing and storage capacity of the facility and to make refinements to the existing liquid waste processing facilities within the constructed building. The Southwaste Disposal Dallas Facility is located at 525 South 6th Avenue, Mansfield, Tarrant County, Texas 76063. The application was received by TCEQ on November 9, 2015. The permit application is available for viewing and copying at the Mansfield Public Library, 104 South Wisteria Street, Mansfield, Tarrant County, 76063-2424, and may be viewed online at http://www.biggsandmathews.com/permits.php. The following link which leads to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.55417&lng=-97.15283&zoom=13&type=r. For exact location, refer to application.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

CHANGE IN LAW. The Texas Legislature enacted Senate Bill 709, effective September 1, 2015, amending the requirements for comments and contested case hearings. This application is subject to those changes in law.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "(I/we) request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility

or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Southwaste Disposal, LLC at the address stated above or by calling Mr. Tim Cox, Vice President of Operations at (713) 413-9400.

TRD-201505753
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 18, 2015

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Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission of names of filers who did not file a report or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: Semiannual Report due January 15, 2015, for Committees

Emran Gazi, Bangladeshi American Political Action Committee, 15703 Park Center Way, Houston, TX 77059

Deadline: Semiannual Report due July 15, 2015, for Committees

Ricardo A. Baca, RAB Law - PAC, 15333 JFK Blvd., Ste. 100, Houston, TX 77032

Samuel R. Caceres II, Coastal Bend Young Democrats, 7018 Anastasia, Corpus Christi, TX 78413

John C. Eberlan, Sustain Excellent Education, 22911 Copper Creek Ln., Katy, TX, 77450

William Elliott, Texas Card Players Association Political Action Committee, P.O. Box 26176, Austin, TX 78755-0176

Emran Gazi, Bangladeshi American Political Action Committee, 15703 Park Center Way, Houston, TX 77059

Mark Anthony Guerra, Del Rio Police Officers' Association Political Action Committee, 86 Tamara Ln., Del Rio, TX 78840

Anthony A. Holm, Texans for Truth PAC, 2216 Robinhood St., Houston, TX 77005-2604

LaShonda M. Johnson, Moving Texas Forward, 11318 Starlight Bay Dr., Pearland, TX 77584

Matthew H. Logan II, Family and Economic Prosperity PAC, 4007 Hill Springs, Kingwood, TX 77345

Lamontry Lott Sr., Black Firefighters United PAC, 2448 Tan Oak Dr., Dallas, TX 75212

Sean M. McDonald, Second Chance Democrats, 814 W. Euclid, San Antonio, TX 78212

Mary Ann Neely, Austin Environmental Democrats Political Action Committee, 1908 Barton Pkwy., Austin, TX 78704

Robbin K. Voight, Geo-PAC, 1102 S. Austin Ave., #110-120, Georgetown, TX 78626

TRD-201505698
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: December 17, 2015

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Texas Facilities Commission

Request for Proposals #303-7-20526

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-7-20526. TFC seeks a five (5) or ten (10) year lease of approximately 6,808 square feet of office space in San Antonio, Bexar County, Texas.

The deadline for questions is January 13, 2016 and the deadline for proposals is January 21, 2016 at 3:00 p.m. The award date is February 17, 2016. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=121741.*

TRD-201505703
Kay Molina
General Counsel
Texas Facilities Commission
Filed: December 17, 2015

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Request for Proposals #303-7-20529

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-7-20529. TFC seeks a five (5) or ten (10) year lease of approximately 2,380 square feet of office space in San Antonio, Bexar County, Texas.

The deadline for questions is January 7, 2016 and the deadline for proposals is January 20, 2016 at 3:00 p.m. The award date is February 17, 2016. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=121734.*

TRD-201505701
Kay Molina
General Counsel
Texas Facilities Commission
Filed: December 17, 2015

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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 October 12, 2015 through December 21, 2015. 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, January 1, 2016. The public comment period for this project will close at 5:00 p.m. on Monday, February 1, 2016.

FEDERAL AGENCY ACTIONS:

Applicant: 3000 Houston Street Development

Location: The project is located in the Lower Laguna Madre, at 3000 Houston Street, in Port Isabel, Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Isabel, Texas.

LATITUDE & LONGITUDE (NAD 83):

Latitude: 26.078899 North; Longitude: 97.210838 West

Project Description: The applicant proposes to reclaim, by filling, a portion of the property that appears to have been lost to erosion over the years prior to its acquisition. A total of 0.879-acre (14,880 cubic yards of sand; 2,100 cubic yards of that will be below the mean high tide line) of jurisdictional area would be involved in this project and some of that area would be enhanced by creating a stone breakwater structure that would act to reduce energy created by wave action which currently adversely affects existing seagrass and oyster habitat onsite.

A 0.081-acre area of existing upland would be scraped down to create low marsh habitat. A total of 54 condominium units would be constructed on the site utilizing both existing uplands and the minimal amount of area needing to be reclaimed.

CMP Project No: 16-1115-F1

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-1998-02541. 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.

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-201505832
Anne L. Idsal
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: December 18, 2015

♦ ♦ ♦

Texas Health and Human Services Commission

Public Notice Correction

STAR Kids Client Information Session

On January 8, 2016, from 11 a.m. - 1 p.m. at the Doctors Hospital at Renaissance Edinburg Conference Center, 118 Paseo Del Prado, Edinburg, TX 78539, the Texas Health and Human Services Commission will hold an information session for clients related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

Because this new program may change the way providers and other services are accessed, HHSC invites those who may be impacted by this new program to join us for an information session to learn more. Information sessions will provide details on STAR Kids, as well as provide the opportunity for attendees to ask questions pertaining to this new managed care program. Separate sessions will be held for families and providers.

You can learn more about the STAR Kids program by visiting: http://www.hhsc.state.tx.us/medicaid/managed-care/mmc/star-kids.shtml.

Contact: Heather Kuhlman, Communications Specialist, Health and Human Services Commission, (512) 730-7437, Heather.Kuhlman@hhsc.state.tx.us.

This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services, including translation, should contact Charles Bredwell, Program Specialist, at (512) 462-6337 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201505723
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: December 18, 2015

♦ ♦ ♦

Public Notice Correction

STAR Kids Client Information Session

On January 9, 2016, from 9:00 a.m. - 11:00 a.m. at the Doctors Hospital at Renaissance Edinburg Conference Center, 118 Paseo Del Prado, Edinburg, TX 78539, the Texas Health and Human Services Commission will hold an information session for clients related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

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TRD-201505724
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: December 17, 2015

♦ ♦ ♦

Public Notice Correction

STAR Kids Provider Information Session

On January 8, 2016, from 2:00 p.m. - 4:00 p.m. at the Doctors Hospital at Renaissance Edinburg Conference Center, 118 Paseo Del Prado, Edinburg, TX 78539, the Texas Health and Human Services Commission will hold an information session for providers related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including, Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

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TRD-201505725
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: December 17, 2015

♦ ♦ ♦

Public Notice - STAR Kids Client Information Session

On January 12, 2016, from 9:00 a.m. - 11:00 a.m. at the Doctors Hospital at Dell Children's Medical Center, Signe Auditorium, 4900 Mueller Blvd., Austin, TX 78723, the Texas Health and Human Services Commission will hold an information session for clients related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

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Contact: Heather Kuhlman, Communications Specialist, Health and Human Services Commission, (512) 730-7437, Heather.Kuhlman@hhsc.state.tx.us.

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TRD-201505784
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: December 18, 2015

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Public Notice - STAR Kids Client Information Session

On January 12, 2016, from 6:00 p.m. - 8:00 p.m. at the Doctors Hospital at Dell Children's Medical Center, Signe Auditorium, 4900 Mueller Blvd., Austin, TX 78723, the Texas Health and Human Services Commission will hold an information session for clients related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

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TRD-201505785
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: December 18, 2015

♦ ♦ ♦

Public Notice - STAR Kids Client Information Session

On January 14, 2016, from 6:00 p.m. - 8:00 p.m. at Texas Tech University, ACB Building 100, 3601 4th Street, Lubbock, Texas, 79430, the Texas Health and Human Services Commission will hold an information session for clients related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

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TRD-201505792
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: December 18, 2015

♦ ♦ ♦

Public Notice - STAR Kids Client Information Session

On January 14, 2016, from 9:00 a.m. - 11:00 a.m. at Texas Tech University, ACB Building 100, 3601 4th Street, Lubbock, Texas, 79430, the Texas Health and Human Services Commission will hold an information session for clients related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Ser-

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TRD-201505798
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: December 18, 2015

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Public Notice - STAR Kids Provider Information Session

On January 12, 2016, from 1:00 p.m. - 3:00 p.m. at the Doctors Hospital at Dell Children's Medical Center, Signe Auditorium, 4900 Mueller Blvd., Austin, TX 78723, the Texas Health and Human Services Commission will hold an information session for providers related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

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TRD-201505781
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: December 18, 2015

♦ ♦ ♦

Public Notice - STAR Kids Provider Information Session

On January 14, 2016, from 1:00 p.m. - 3:00 p.m. at Texas Tech University, ACB Building 100, 3601 4th Street, Lubbock, Texas, 79430, the Texas Health and Human Services Commission will hold an information session for providers related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

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TRD-201505794
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: December 18, 2015

♦ ♦ ♦

Transformation Public Hearings - Grand Prairie

The Health and Human Services Commission (HHSC) announces its intent to host several public hearings at various locations around the state to provide information on transformation of the Health and Human Services (HHS) agencies, in accordance with Texas Government Code §531.0204(c), adopted by the passage of S.B. 200, 84th Leg., R.S. This transformation presents an opportunity to restructure the Texas

HHS system to make it more functional, efficient, effective, and responsive. As this two-year transformation process unfolds, HHS agencies will be seeking input from members of the public generally and stakeholders: people who use health and human services, benefits, and programs; people and organizations that provide services; and people and organizations that support those who use services and benefits.

To learn more about the transformation process, please review information on the HHS Transformation website, http://www.hhsc.state.tx.us/hhs-transformation/index.shtml.

The HHS agencies will solicit stakeholder input at a public forum on Thursday, January 7, 2016, at 1:30 p.m. at the Bank of America, Lone Star Conference Room, 2nd Floor, 801 S. State Highway 161 in Grand Prairie, Texas. Future public forums will be held in Harlingen, Houston, and Tyler. Dates, times, and locations for these public forums are posted at http://www.hhsc.state.tx.us/hhs-transformation/comment-page.shtml.

HHSC will receive public comment on the HHS transformation in any of the following ways:

Public hearing testimony. Anyone may speak at one of public hearings being scheduled around the state.

Online survey. Anyone may complete an online survey at https://www.surveymonkey.com/r/HHS-Transformation.

Written comments. Written comments regarding the transformation may be submitted instead of, or in addition to, oral testimony until 5 p.m. on January 22, 2016. Written comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email.

U.S. Mail

Texas Health and Human Services Commission

Attention: Penny Larkin, Transformation Specialist

Mail Code 1045

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Penny Larkin, Transformation Specialist

Mail Code 1045

Brown-Heatly Building

4900 North Lamar Blvd.

Austin, Texas 78751

Phone number for package delivery (512) 428-1961

Fax

(512) 487-3455

Email

HHS_Transformation@hhsc.state.tx.us

TRD-201505681
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: December 16, 2015

♦ ♦ ♦

Transformation Public Hearings - Houston

The Health and Human Services Commission (HHSC) announces its intent to host several public hearings at various locations around the state to provide information on transformation of the Health and Human Services (HHS) agencies, in accordance with Texas Government Code §531.0204(c), adopted by the passage of S.B. 200, 84th Leg., R.S. This transformation presents an opportunity to restructure the Texas HHS system to make it more functional, efficient, effective, and responsive. As this two-year transformation process unfolds, HHS agencies will be seeking input from members of the public generally and stakeholders: people who use health and human services, benefits, and programs; people and organizations that provide services; and people and organizations that support those who use services and benefits.

To learn more about the transformation process, please review information on the HHS Transformation website, http://www.hhsc.state.tx.us/hhs-transformation/index.shtml.

The HHS agencies will solicit stakeholder input at a public forum on Monday, January 11, 2016, at 1:30 p.m. at the Harris County Annex M, 2525 Murworth Drive in Houston. Future public forums will be held in Harlingen and Tyler. Dates, times, and locations for these public forums are posted at http://www.hhsc.state.tx.us/hhs-transformation/comment-page.shtml.

HHSC will receive public comment on the HHS transformation in any of the following ways:

Public hearing testimony. Anyone may speak at one of public hearings being scheduled around the state.

Online survey. Anyone may complete an online survey at https://www.surveymonkey.com/r/HHS-Transformation.

Written comments. Written comments regarding the transformation may be submitted instead of, or in addition to, oral testimony until 5 p.m. on January 22, 2016. Written comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email.

U.S. Mail

Texas Health and Human Services Commission

Attention: Penny Larkin, Transformation Specialist

Mail Code 1045

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Penny Larkin, Transformation Specialist

Mail Code 1045

Brown-Heatly Building

4900 North Lamar Blvd.

Austin, Texas 78751

Phone number for package delivery (512) 428-1961

Fax

(512) 487-3455

Email

HHS_Transformation@hhsc.state.tx.us

TRD-201505683

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: December 16, 2015

♦ ♦ ♦

Transformation Public Hearings - Tyler

The Health and Human Services Commission (HHSC) announces its intent to host several public hearings at various locations around the state to provide information on transformation of the Health and Human Services (HHS) agencies, in accordance with Texas Government Code §531.0204(c), adopted by the passage of S.B. 200, 84th Leg., R.S. This transformation presents an opportunity to restructure the Texas HHS system to make it more functional, efficient, effective, and responsive. As this two-year transformation process unfolds, HHS agencies will be seeking input from members of the public generally and stakeholders: people who use health and human services, benefits, and programs; people and organizations that provide services; and people and organizations that support those who use services and benefits.

To learn more about the transformation process, please review information on the HHS Transformation website, http://www.hhsc.state.tx.us/hhs-transformation/index.shtml.

The HHS agencies will solicit stakeholder input at a public forum on Wednesday, January 13, 2016, at 1:30 p.m. at the HHSC Regional Office, Conference Room 304 A and B, Third Floor, 302 East Rieck Road in Tyler. The final forum will be held in Harlingen. The date, time, and location for this public forum is posted at http://www.hhsc.state.tx.us/hhs-transformation/comment-page.shtml.

HHSC will receive public comment on the HHS transformation in any of the following ways:

Public hearing testimony. Anyone may speak at one of public hearings being scheduled around the state.

Online survey. Anyone may complete an online survey at https://www.surveymonkey.com/r/HHS-Transformation.

Written comments. Written comments regarding the transformation may be submitted instead of, or in addition to, oral testimony until 5 p.m. on January 22, 2016. Written comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email.

U.S. Mail

Texas Health and Human Services Commission

Attention: Penny Larkin, Transformation Specialist

Mail Code 1045

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Penny Larkin, Transformation Specialist

Mail Code 1045

Brown-Heatly Building

4900 North Lamar Blvd.

Austin, Texas 78751

Phone number for package delivery (512) 428-1961

Fax

(512) 487-3455

Email

HHS_Transformation@hhsc.state.tx.us

TRD-201505682
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: December 16, 2015

♦ ♦ ♦

Texas Department of Housing and Community Affairs

2016 Emergency Solutions Grants Program Survey

Assuming level funding, the Texas Department of Housing and Community Affairs (the Department) is expecting to receive approximately $8,891,395 in Federal Fiscal Year ("FFY") 2016 Emergency Solutions Grants ("ESG") funds from the U.S. Department of Housing and Urban Development ("HUD").

The Department's contract period for FFY 2016 will run from October 1, 2016, through September 30, 2017. The Department anticipates receiving permission to release the FFY 2016 ESG Notice of Funding Availability ("NOFA") from its Board on January 28, 2016 and anticipates releasing the FFY 2016 ESG NOFA shortly thereafter.

The Department is conducting a stakeholder survey to seek feedback from Continuum of Care ("CoC") Lead Agencies and their members on ESG topics related to allocation of funding, performance standards, and Homeless Management Information Systems ("HMIS"). The Department appreciates CoC members taking the time to complete this survey and will consider the feedback provided in the development of its FFY 2016 ESG Program.

TOPICS OF CONSULTATION

24 C.F.R. Parts 91 and 576 require that ESG recipients consult with CoCs on:

1) *Determining how to allocate its ESG grant for eligible activities;*

2) *Developing the performance standards for, and evaluating the outcomes of, projects and activities assisted by ESG funds; and*

3) *Developing funding, policies, and procedures for the administration and operation of the HMIS.*

SURVEY DEADLINE

The survey can be found online at https://www.surveymonkey.com/r/2016ESGconsultation. The survey will be open from Friday, December 18, 2015, and will close at 5:00 p.m. Austin Local Time on Monday, January 11, 2016.

QUESTIONS

If you have any questions regarding the survey, please contact Naomi Trejo, Coordinator for Homelessness Programs and Policy, at naomi.trejo@tdhca.state.tx.us or at (512) 475-3975.

TRD-201505686
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 16, 2015

♦ ♦ ♦

Notice of Public Comment Period and Public Hearing on the Draft 2016 State of Texas Low Income Housing Plan and Annual Report

The Texas Department of Housing and Community Affairs ("TDHCA") will hold a 35-day public comment period from Friday, December 18, 2015 through 6:00 p.m. Austin local time on Thursday, January 21, 2016, to obtain public comment on the Draft 2016 State of Texas Low Income Housing Plan and Annual Report ("SLIHP").

The SLIHP offers a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. It reviews TDHCA's housing programs, current and future policies, resource allocation plans to meet state housing needs, and reports on performance during the preceding state fiscal year (September 1, 2014, through August 31, 2015).

During the public comment period, a public hearing will take place as follows:

Thursday, January 14, 2016

2:00 p.m. Austin local time

Stephen F. Austin State Office Building, Room 170

1700 N. Congress Avenue

Austin, Texas 78701

Anyone may submit comments on the SLIHP in written form or oral testimony at the public hearing. Written comments may be submitted to Texas Department of Housing and Community Affairs, Elizabeth Yevich, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: info@tdhca.state.tx.us, or by fax to (512) 475-0070.

The full text of the Draft 2016 SLIHP may be viewed at the Department's website: http://www.tdhca.state.tx.us/housing-center/pubs-drafts.htm. The public may also receive a copy of the draft 2015 SLIHP by contacting TDHCA's Housing Resource Center at (512) 475-3976.

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 1-800-735-2989 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 Elena Peinado by phone at (512) 475-3814 or by email at elena.peinado@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 Elena Peinado al siguiente número (512) 475-3814 o enviarle un correo electrónico a elena.peinado@tdhca.state.tx.us por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-201505722

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Filed: December 17, 2015

♦ ♦ ♦

Texas Lottery Commission

Scratch Ticket Game Number 1745 "$500,000 Money Mania"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1745 is "$500,000 MONEY MANIA". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1745 shall be $20.00 per Ticket.

1.2 Definitions in Scratch Ticket Game No. 1745.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, $5.00, $10.00, $20.00, $25.00, $50.00, $100, $250, $500, $1,000, $10,000 and $500,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1745 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUN
$250	TWO FTY
$500	FIV HUN
$1,000	ONE THOU
$10,000	TEN THOU
$500,000	5 HUN THOU

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $25.00, $50.00, $100, $250 or $500.

H. High-Tier Prize - A prize of $1,000, $10,000 or $500,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1745), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 1745-0000001-001.

K. Pack - A Pack of the "$500,000 MONEY MANIA" Scratch Ticket Game contains 025 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Scratch Ticket 001 and back of 025 while the other fold will show the back of Scratch Ticket 001 and front of 025.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Scratch Game Ticket, Scratch Ticket or Ticket - Texas Lottery "$500,000 MONEY MANIA" Scratch Ticket Game No. 1745.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "$500,000 MONEY MANIA" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 58 (fifty-eight) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. The player scratches the MONEY MANIA NUMBER. If the player matches the MONEY MANIA NUMBER to any of the YOUR NUMBERS Play Symbols, the player wins 5 TIMES the prize for that number. BONUS: If a player reveals two matching prize amounts, the player wins that amount. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 58 (fifty-eight) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut and have exactly 58 (fifty-eight) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 58 (fifty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 58 (fifty-eight) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas

Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to twenty six (26) times in accordance with the approved prize structure.

B. Adjacent Tickets within a Pack will not have matching Play Symbol and Prize Symbol patterns. Two (2) Tickets have matching Play Symbol and Prize Symbol patterns if they have the same Play Symbols and Prize Symbols in the same spots.

C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have six (6) different "WINNING NUMBERS" and "MONEY MANIA NUMBER" Play Symbols.

E. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than three (3) times.

G. The "MONEY MANIA NUMBER" Play Symbol will match a "YOUR NUMBERS" Play Symbol only as dictated by the prize structure to win five (5) times the prize indicated.

H. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

I. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 20 and $20).

2.3 Procedure for Claiming Prizes.

A. To claim a "$500,000 MONEY MANIA" Scratch Ticket Game prize of $5.00, $10.00, $20.00, $25.00, $50.00, $100, $250 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $100, $250 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$500,000 MONEY MANIA" Scratch Ticket Game prize of $1,000, $10,000 or $500,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$500,000 MONEY MANIA" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "$500,000 MONEY MANIA" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "$500,000 MONEY MANIA" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A

Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 6,000,000 Scratch Tickets in Scratch Ticket Game No. 1745. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1745 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	2,280,000	2.63
$10	1,800,000	3.33
$20	1,380,000	4.35
$25	300,000	20.00
$50	156,000	38.46
$100	60,000	100.00
$250	13,125	457.14
$500	9,750	615.38
$1,000	1,022	5,870.84
$10,000	100	60,000.00
$500,000	3	2,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning any prize, including prizes of less than $20, are 1 in 1.00. The odds of winning a prize of $20 or more are 1 in 3.13. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1745 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1745, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201505805

Bob Biard
General Counsel
Texas Lottery Commission
Filed: December 18, 2015

♦ ♦ ♦

Scratch Ticket Game Number 1788 "Triple the Money"

1.0 Name and Style of Game.

A. The name of Scratch Ticket Game No. 1788 is "TRIPLE THE MONEY". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1788 shall be $2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1788.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, MONEY BAG SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $200, $1,000 and $30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1788 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
MONEY BAG SYMBOL	TPL
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUN
$200	TWO HUN
$1,000	ONE THOU
$30,000	30 THOU

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00 or $200.

H. High-Tier Prize - A prize of $1,000 or $30,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1788), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket

numbers start with 001 and end with 125 within each Pack. The format will be: 1788-0000001-001.

K. Pack - A Pack of "TRIPLE THE MONEY" Scratch Ticket Game contains 125 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Scratch Ticket will be folded over to expose a front and back of one Scratch Ticket on each Pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Scratch Ticket Game, or Scratch Ticket, or Ticket - A Texas Lottery "TRIPLE THE MONEY" Scratch Ticket Game No. 1788.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "TRIPLE THE MONEY" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 23 (twenty-three) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "Money Bag" Play Symbol, the player wins TRIPLE the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 23 (twenty-three) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut and have exactly 23 (twenty-three) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 23 (twenty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 23 (twenty-three) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to ten (10) times in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play Symbol and Prize Symbol patterns. Two (2) Tickets have matching Play Symbol and Prize Symbol patterns if they have the same Play Symbols and Prize Symbols in the same spots.

C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have three (3) different "WINNING NUMBERS" Play Symbols.

E. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than two (2) times.

G. The "Money Bag" (TPL) Play Symbol will never appear in the "WINNING NUMBERS" Play Symbol spots.

H. The "Money Bag" (TPL) Play Symbol will only appear as dictated by the prize structure.

I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "TRIPLE THE MONEY" Scratch Ticket Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $200, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $200 Scratch Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TRIPLE THE MONEY" Scratch Ticket Game prize of $1,000 or $30,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TRIPLE THE MONEY" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "TRIPLE THE MONEY" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "TRIPLE THE MONEY" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 9,120,000 Scratch Tickets in the Scratch Ticket Game No. 1788. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1788 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	875,520	10.42
$4	802,560	11.36
$5	218,880	41.67
$10	109,440	83.33
$20	72,960	125.00
$50	43,852	207.97
$200	3,800	2,400.00
$1,000	114	80,000.00
$30,000	6	1,520,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.29. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1788 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1788, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201505807
Bob Biard
General Counsel
Texas Lottery Commission
Filed: December 18, 2015

♦ ♦ ♦

Public Utility Commission of Texas

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 (commission) on December 10, 2015, pursuant to the Public Utility Regulatory Act, Tex. Util. Code Ann. §39.154 and §39.158 (West 2008 & Supp. 2015) (PURA).

Docket Style and Number: Application of Luminant Generation Company LLC, Big Brown Power Company, LLC, Oak Grove Management Company LLC, Sandow Power Company LLC, and Tradinghouse Power Company LLC Pursuant to Section §39.158 of the Public Utility Regulatory Act, Docket Number 45429.

The Application: Luminant Generation Company LLC (Luminant Generation), Big Brown Power Company LLC, Oak Grove Management Company LLC, Sandow Power Company LLC, and Tradinghouse Power Company LLC (collectively Applicants) have filed an application for approval of a proposed acquisition by Applicants' direct parent company, Luminant Holding Company LLC, of 100 percent of the membership interests in La Frontera Holdings, LLC which indirectly owns two natural gas-fired facilities in the Electric Reliability Council of Texas (ERCOT) with a combined capacity of approximately 2,850 MW. The Applicants' ownership and control of installed generation capacity in ERCOT will be less than 20 percent.

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 45429.

TRD-201505691
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 16, 2015

♦ ♦ ♦

Notice of Petition for True-Up of 2013 Federal Universal Service Fund Impacts to Texas Universal Service Fund

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on December 11, 2015, for true-up of 2013 Federal Universal Service Fund (FUSF) Impacts to Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of Valley Telephone Cooperative, Inc. for True-Up of 2013 Federal Universal Service Fund Impacts to the Texas Universal Service Fund, Docket Number 45436.

The Application: Valley Telephone Cooperative, Inc. (VTCI) filed a true-up report in accordance with Finding of Fact Nos. 18 thru 20 of the final Order in Docket No. 41332. In Docket No. 41332 the Public Utility Commission of Texas (Commission) approved VTCI's application to recover funds from the Texas Universal Service Fund and ordered a true-up of the Federal Universal Service Fund revenue changes. This application addresses VTCI's final and actual FUSF impact for 2013.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. 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 45436.

TRD-201505803
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 18, 2015

♦ ♦ ♦

Texas Department of Transportation

Public Notice - Advertising in Texas Department of Transportation's Travel Literature and *Texas Highways* Magazine

Advertising in Texas Department of Transportation Travel Literature and *Texas Highways* magazine, both in print and in digital or online assets. The Texas Department of Transportation is authorized by Texas Transportation Code, Chapter 204 to publish literature for the purpose of advertising the highways of this state and attracting traffic thereto, and to include paid advertising in such literature. Title 43, Texas Administrative Code, §23.10 and §23.29 describe the policies governing advertising in department travel literature and *Texas Highways* magazine, both in print and in digital or online, lists acceptable and unacceptable subjects for advertising in department travel literature and the magazine, and describes the procedures by which the department will solicit advertising.

As required by 43 TAC §23.10(e)(4)(A) and 43 TAC §23.29(d)(1) the department invites any entity or individual interested in advertising in department travel literature and *Texas Highways* magazine to request to be added to the department's contact list. Written requests may be mailed to the Texas Department of Transportation, Travel Information Division, Travel Publications Section, P.O. Box 141009, Austin, Texas, 78714-1009. Requests may also be made by telephone to (512) 486-5880 or sent by fax to (512) 486-5879.

The department is now accepting advertising for the 2017 edition of the *Texas State Travel Guide,* scheduled to be printed and available in January 2017. The *Texas State Travel Guide* is designed to encourage readers to explore and travel to and within the State of Texas. The guide lists cities and towns, featuring population figures and recreational travel sites for each, along with maps and 4-color photography. The guide may also include sections listing Texas lakes, state parks, state and national forests, along with hunting and fishing information. The State of Texas distributes this vacation guide to travelers in Texas and to those who request information while planning to travel in Texas.

Media kits are available on the texashighways.com website. All *Texas State Travel Guide* insertion orders, including premium space will be accepted on a first-come first-served basis. Insertion orders for an inside front cover spread and inside back cover spread will take precedence over an inside front cover and inside back cover insertion order. In most cases, larger ads will be positioned ahead of smaller ads.

The department is now accepting advertising for the 2017 edition of the *Texas Official Travel Map* scheduled to be printed and available in January 2017. The State of Texas distributes this map to travelers in Texas and to those who request information while planning to travel in Texas.

The department continues to accept advertising for all quarterly issues of the *Texas Highways Events Calendar,* beginning with the Summer 2016 calendar. The *Texas Highways Events Calendar* is published quarterly, corresponding with the seasons, to provide information about events happening in Texas throughout the year. The *Texas Highways Events Calendar* includes festivals, art exhibits, rodeos, indoor and outdoor music and theatre productions, concerts, nature tours, and more, depending on the season. The State of Texas distributes this quarterly calendar to travelers in Texas and to those who request information on events happening around the state.

The Summer 2016 calendar lists events scheduled for June 2016, July 2016, and August 2016. The Fall 2016 calendar lists events scheduled for September 2016, October 2016, and November 2016. The Winter 2016-2017 calendar lists events scheduled for December 2016, January 2017, and February 2017. The Spring 2017 calendar lists events scheduled for March 2017, April 2017, and May 2017.

The advertising due dates for the *Texas Highways Events Calendar* vary depending on the issue involved. The publication deadline for accepting advertising space in the *Texas Highways Events Calendar* is the second Wednesday of the fourth month preceding the issue date. The deadline for accepting materials for the *Texas Highways Events Calendar* is two weeks after space closing. When material or space closing dates fall on a Saturday, Sunday or holiday, space and/or materials are due the preceding workday.

The department is now accepting advertising for all monthly 2016 issues of *Texas Highways* magazine. *Texas Highways* magazine is a monthly publication designed to encourage recreational travel within the state and to tell the Texas story to readers around the world. Accordingly, the content of the magazine is focused on Texas vacation, recreational, travel, or tourism related subjects, shopping opportunities in Texas and for Texas related products, various outdoor events, sites, facilities, and services in the state, transportation modes and facilities in the state, and other sites, products, facilities, and services that are travel related or Texas-based, and that are determined by the department to be of cultural, educational, historical, or of recreational interest to *Texas Highways* readers.

The publication deadline for accepting advertising space in *Texas Highways* magazine is the 27th of the third month preceding the issue date. The deadline for accepting materials for *Texas Highways* magazine is seven days after space closing. When material or space closing dates fall on a Saturday, Sunday or holiday, space and/or materials are due the preceding workday.

The rate card information for potential advertisers in the *Texas State Travel Guide,* the *Texas Highways Events Calendar, Texas Highways* magazine, the *Texas Official Travel Map* and related digital assets are

included in this notice. Digital assets may include *TexasHighways.com* and *Texas Highways* Extra eNewsletter.

TEXAS STATE TRAVEL GUIDE

Space Closing: October 5, 2016
Materials Due: October 12, 2016
First Distribution: January 2017

Advertising Rates

ROP:	Gross
Full Page	$24,850
Two Thirds (2/3) Page	$17,752
Half (1/2) Page	$14,928
One Third (1/3) Page	$ 8,952
One Sixth (1/6) Page	$ 5,645
Premium Positions:	**Gross**
Cover 2 (Inside Front)	$28,578
Cover 3 (Inside Back)	$28,081
Cover 4 (Back)	$29,820
Spread (Run of Publication)	$47,215
Inside Front Cover Spread	$50,757
Inside Back Cover Spread	$50,284

Note: All rates are 4-color (no black and white). Note: Special placement requests will be accommodated if possible and will result in a 10% surcharge. Rates for inserts, gatefolds, multi-title frequency advertising, and other special advertising will be quoted on request.

Plans: Early Reservation Discount: Organizations reserving their space by Wednesday, August 3, 2016 will receive a 5% discount off the net space price.

Umbrella Plan A: 5% discount for 1x Texas State Travel Guide, 3x Texas Highways Magazine, 2x Texas Events Calendar
Umbrella Plan B: 10% discount for 1x Texas State Travel Guide, 6x Texas Highways Magazine, 4x Texas Events Calendar
Umbrella Plan C: 10% discount for 1x Texas State Travel Guide, 12x Texas Highways Magazine, 2x Texas Events Calendar

Contracted Umbrella Plan discount applies to TexasHighways.com, Texas Highways Extra eNewsletter, and the Official Texas State Travel Map. See advertising representative for details.

Payment: Payment with order or net 30 from invoice date. All orders must be paid in full by October 12, 2016, unless tear sheet or proof of printing is required.

Texas Highways Events Calendar

Advertising Rates/Due Dates

Year 2016/2017

Run of Publication	1X	2X	4X
	Gross	Gross	Gross
FULL PAGE	$ 2,223	$ 2,154	$ 2,084
HALF PAGE	$ 1,528	$ 1,493	$ 1,424
THIRD PAGE	$ 1,111	$ 1,076	$ 1,007

COVERS (4-Color)	1X	2X	4X
	Gross	Gross	Gross
COVER 2	$ 3,473	$ 3,226	$ 2,977
COVER 3	$ 2,977	$ 2,729	$ 2,481
COVER 4	$ 4,167	$ 3,969	$ 3,771

Note: Special placement requests will be accommodated if possible and will result in a 10% surcharge.

Payment with order or net 30 from invoice date. All orders must be paid in full by 30 days after publication release date. Rates for inserts, multi-title frequency advertising, and other special advertising will be quoted on request.

Advertising Due Dates:

Issue Date	Space Closing	Materials Due	Release Date
Summer 2016 (J,J,A)	Feb 10, 2016	Feb 24, 2016	May 1, 2016
Fall 2016 (S,O,N)	May 11, 2016	May 25, 2016	August 1, 2016
Winter 2015-16 (D,J,F)	Aug 10, 2016	Aug 24, 2016	Nov 1, 2016
Spring 2016 (M,A,M)	Nov 9, 2016	Nov 23, 2016	February 1, 2017

TEXAS HIGHWAYS MAGAZINE

Texas Rate Card (All rates gross)

Four-Color	1x	3x	6x	12x	18x	24x
Full Page ROP	$7,476	$7,102	$6,878	$6,654	$6,429	$6,206
2/3 Page	$6,174	$5,865	$5,681	$5,495	$5,310	$5,124
1/2 Page	$4,853	$4,615	$4,469	$4,323	$4,177	$4,032
1/3 Page	$3,492	$3,318	$3,213	$3,108	$3,003	$2,899
1/6 Page	$1,922	$1,826	$1,768	$1,710	$1,653	$1,595
Cover 2	$8,447	$8,025	$7,771	$7,518	$7,264	$7,011
Cover 3	$8,148	$7,741	$7,496	$7,252	$7,007	$6,763
Cover 4	$8,597	$8,167	$7,909	$7,651	$7,393	$7,136
ROP Spread	$14,204	$13,494	$13,068	$12,642	$12,215	$11,789
IFC Spread	$15,127	$14,371	$13,917	$13,460	$13,009	$12,555
IBC Spread	$14,843	$14,101	$13,656	$13,201	$12,765	$12,320

Special placement requests will be accommodated if possible and will result in a 10% surcharge.

Co-op advertisements do not qualify for special placement.

Payment: Payment with order or net 30 from invoice date.

Space Deadline: 27th of the third month preceding issue date.

Materials Deadline: Seven days after space closing. When material or space closing dates fall on a Saturday, Sunday, or a holiday, space or materials are due the preceding workday.

Cover Ad Creative: Back cover and inside cover ad design creative must be approved by the Texas Highways creative director. Coop ads and ads with excessive photography, fonts, and copy will not be accepted.

TEXAS HIGHWAYS MAGAZINE

National Rate Card (All rates gross)

Four-Color	1x	3x	6x	12x	18x	24x
Full Page ROP	$12,460	$11,837	$11,463	$11,090	$10,715	$10,343
2/3 Page	$10,290	$9,776	$9,469	$9,158	$8,894	$8,540
1/2 Page	$8,096	$7,691	$7,448	$7,061	$6,962	$6,720
1/3 Page	$5,820	$5,530	$5,355	$5,180	$5,005	$4,831
1/6 Page	$3,202	$3,043	$2,947	$2,851	$2,754	$2,659
Cover 2	$14,080	$13,376	$12,954	$12,531	$12,109	$11,686
Cover 3	$13,581	$12,902	$12,495	$12,087	$11,680	$11,272
Cover 4	$14,329	$13,613	$13,183	$12,753	$12,323	$11,893
ROP Spread	$23,674	$22,490	$21,780	$21,070	$20,360	$19,649
IFC Spread	$25,213	$23,952	$23,196	$22,440	$21,683	$20,927
IBC Spread	$25,450	$24,178	$23,414	$22,651	$21,887	$21,124

Special placement requests will be accommodated if possible and will result in a 10% surcharge.

Co-op advertisements do not qualify for special placement.

Payment:	Payment with order or net 30 from invoice date.
Space Deadline:	27th of the third month preceding issue date.
Materials Deadline	Seven days after space closing. When material or space Closing dates fall on a Saturday, Sunday, or a holiday, space or materials are due the preceding workday.
Cover Ad Creative	Back cover and inside cover ad design creative must be approved by the Texas Highways creative director. Coop ads and ads with excessive photography, fonts, and copy will not be accepted.

TEXAS OFFICIAL TRAVEL MAP

Advertising Rates

Year 2016 Rate Base: 1,400,000
Space Closing: October 5, 2016
Materials Due: October 12, 2016
First Distribution: January 2017

ROP:	Gross
Full Panel	$52,395
Half (1/2) Panel	$29,584

Note: All rates are 4-color (no black and white).

Payment: Payment with order or net 30 from invoice date. All orders must be paid in full by October 12, 2016.

Discount plans: Contact AJR Media Group for more information on multi-title discounts with the other TxDOT travel publications: *Texas Highways*, *Texas State Travel Guide* and *Texas Highways Events Calendar*.

Ad Creative

Back cover and inside cover ad design creative must be approved by the Texas Highways creative director.

TexasHighways.com

Online Advertising Rates

Current web statistics are available from advertising representatives.

Based on Available Inventory:	Gross
Medium Rectangle (300 x 250)	$495
Wide Skyscraper (160 x 600)	$495
Rectangle (180 x 150)	$200

Note: Based on available inventory
Banners are sold in 25,000 impression increments which are scheduled to be delivered in a 30-day period. In the event that the impressions are not delivered in 30 days, banners will run until 25,000 impressions are delivered. Limit of 6 banners in each position (18 banners total) may be purchased for each product/service in a 12-month period.

Payment: Payment with order or net 30 from invoice date.

Discount plans: Contact AJR Media Group for more information on multi-title discounts with the other TxDOT travel publications: *Texas Highways*, *Texas State Travel Guide* and *Texas Highways Events Calendar*.

Texas Highways Extra

(Twice monthly eNewsletter)

Advertising Rates

Approximate opt-in recipients per issue: 100,000

Based on Available Inventory:	Gross
Exclusive Banner (468 x 60)	$1,250
Text Advertisements (limited to 3 per issue)	$250

Note: Based on available inventory

Payment: Payment with order or net 30 from invoice date.

Discount plans: Contact AJR Media Group for more information on multi-title discounts with the other TxDOT travel publications: *Texas Highways*, *Texas State Travel Guide* and *Texas Highways Events Calendar*.

TRD-201505693
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: December 17, 2015

♦ ♦ ♦

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website:

www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html.

Or visit www.txdot.gov, How Do I Find Hearings and Meetings, choose Hearings and Meetings, and then choose Schedule.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4500 or 1-800-68-PILOT.

TRD-201505694
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: December 17, 2015

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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.

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.

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 40 (2015) is cited as follows: 40 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 "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code.* Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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