TEXAS REGISTER

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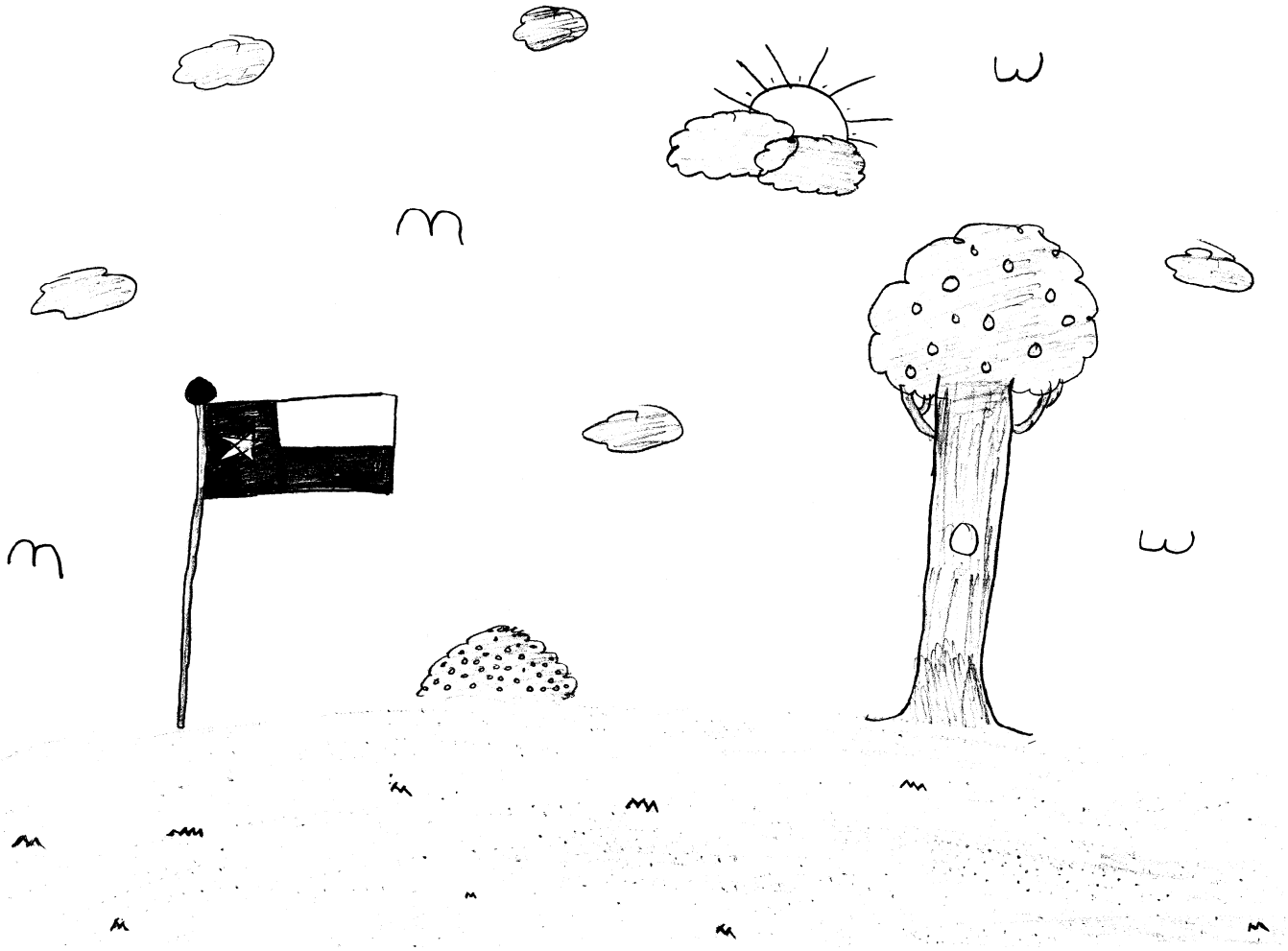

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

Texas Department of Transportation

Texas Water Development Board

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:
http://www.texas.gov

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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.

THE GOVERNOR

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

Appointments

Appointments for October 10, 2017

Appointed to the Texas Commission on Fire Protection, for a term to expire February 1, 2023, Michael P. Jones of Burleson (Captain Jones is being reappointed).

Appointed to the Texas Commission on Fire Protection, for a term to expire February 1, 2023, Bob D. Morgan of Forth Worth (replacing John Kelly Gillette, III of Frisco whose term expired).

Appointed to the Texas Commission on Fire Protection, for a term to expire February 1, 2023, Mala Sharma of Houston (replacing Elroy Carson of Ransom Canyon whose term expired).

Appointed to the Texas Commission on Fire Protection, for a term to expire February 1, 2023, John Paul Steelman of Longview (replacing Laurence Patton Ekiss of Taylor whose term expired).

Greg Abbott, Governor

TRD-201704108

♦ ♦ ♦

Proclamation 41-3565

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, did authorize the suspension of statutes and rules relating to vehicle registration and inspection requirements for motor vehicle owners who reside in disaster-declared counties for a period of 45 days beginning on August 31, 2017; and

WHEREAS, due to the catastrophic damage caused by Hurricane Harvey, vehicle registration and inspection requirements remain problematic and burdensome for many citizens in areas directly affected by the hurricane.

THEREFORE, in accordance with the authority vested in me by Section 418.016 of the Texas Government Code, I do hereby suspend the following laws and regulations relating to vehicle registration and inspection:

Sections 502.040, 502.473, and 548.605 of the Texas Transportation Code; and

Title 43, Sections 217.25 and 217.28 of the Texas Administrative Code.

This suspension is in effect until November 15, 2017, and shall only apply to motor vehicle owners who reside in any of the following counties:

Aransas, Austin, Bastrop, Bee, Brazoria, Burleson, Caldwell, Calhoun, Chambers, Colorado, Comal, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Grimes, Guadalupe, Hardin, Harris, Jackson, Jasper, Jefferson, Jim Wells, Karnes, Kleberg, Lavaca, Lee, Liberty, Madison, Matagorda, Milam, Montgomery, Newton, Nueces, Orange, Polk, Refugio, Sabine, San Augustine, San Jacinto, San Patricio, Tyler, Victoria, Walker, Waller, Washington and Wharton.

The executive director of the Texas Department of Motor Vehicles or her designee is directed to notify the Texas Department of Public Safety and relevant local government officials of this suspension.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 16th day of October, 2017.

Greg Abbott, Governor

TRD-201704168

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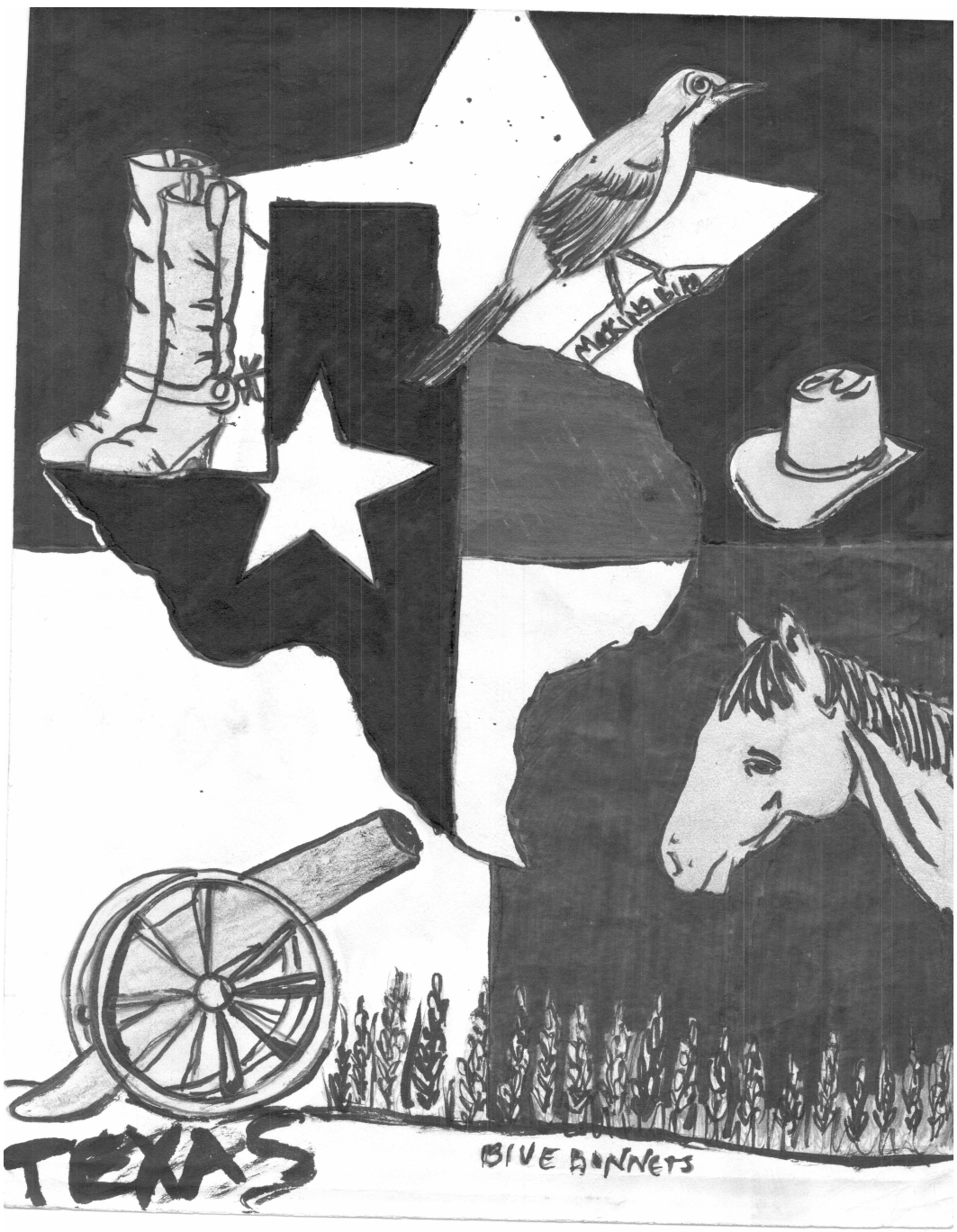
MOCKING BIRD
TEXAS
BIVE BONNETS

THE ATTORNEY GENERAL

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

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

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

Requests for Opinions - Withdrawn

RQ-0184-KP

Opinion Request RQ-0184-KP has been withdrawn by the Requestor.

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

TRD-201704183
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: October 18, 2017

♦ ♦ ♦

Requests for Opinions

RQ-0185-KP

Requestor:

The Honorable Joseph C. Pickett

Chair, Committee on Environmental Regulation

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: To what extent the Texas Commission on Environmental Quality may consider a recommendation from a local government to deny a permit for a facility because the facility is incompatible with the local government's zoning or land use ordinances (RQ-0185-KP)

Briefs requested by November 13, 2017

RQ-0186-KP

Requestor:

The Honorable Elmer C. Beckworth

Cherokee County District Attorney

Post Office Box 450

Rusk, Texas 75785

Re: Municipal police jurisdiction beyond the city limits (RQ-0186-KP)

Briefs requested by November 13, 2017

RQ-0187-KP

Requestor:

The Honorable Matthew C. Poston

Liberty County Attorney

1923 Sam Houston, Suite 202

Liberty, Texas 77575

Re: Whether an elected constable and his deputies may simultaneously serve under the sheriff, specifically to perform tasks related to the duties of a weight enforcement officer under Transportation Code chapter 621 (RQ-0187-KP)

Briefs requested by November 13, 2017

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

TRD-201704181
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: October 18, 2017

♦ ♦ ♦

Opinions

Opinion No. KP-0169

The Honorable Lyle Larson

Chair, Committee on Natural Resources

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a municipal utility district may use its surplus funds to repair or replace cluster-type mailbox facilities that serve residences in the district (RQ-0160-KP)

S U M M A R Y

The Wells Branch Municipal Utility District may not use its surplus funds to repair or replace cluster-type mailbox facilities that serve residences in the District.

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

TRD-201704184

Amanda Crawford
General Counsel
Office of the Attorney General
Filed: October 18, 2017

♦ ♦ ♦

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

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

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER D. UNDERWRITING AND LOAN POLICY

10 TAC §§10.301 - 10.306

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 10, Subchapter D, concerning Underwriting and Loan Policy, §§10.301 - 10.306. The proposed amendments eliminate certain provisions and modifications are made to others.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated, as a result of the amendments, will be improved efficiency in reviewing an application for multifamily funding. There will not be any additional economic cost to any persons required to comply with the amendments.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 27, 2017, through November 27, 2017, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Brent Stewart, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-1895.

ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, November 27, 2017.

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

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

§10.301. General Provisions.

(a) Purpose. This Subchapter applies to the underwriting, Market Analysis, appraisal, Environmental Site Assessment, Property Condition Assessment, and Direct Loan standards employed by the Department. This Subchapter provides rules for the underwriting review of an affordable housing Development's financial feasibility and economic viability that ensures the most efficient allocation of resources while promoting and preserving the public interest in ensuring the long-term health of the Department's portfolio. In addition, this Subchapter guides staff in making recommendations to the Executive Award and Review Advisory Committee (the "Committee"), Executive Director, and the Board to help ensure procedural consistency in the determination of Development feasibility (Tex. Gov't [~~Texas Government~~] Code, §§2306.081(c), 2306.185, and 2306.6710(d)). Due to the unique characteristics of each Development, the interpretation of the rules and guidelines described in this Subchapter is subject to the discretion of the Department and final determination by the Board.

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

§10.302. Underwriting Rules and Guidelines.

(a) General Provisions. Pursuant to Tex. Gov't [~~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. Additionally, 24 CFR Parts 92 and 93, as further described in CPD Notice 15-11 require the Department to adopt rules and standards to determine the appropriate Multifamily Direct Loan feasibility. The rules adopted pursuant to the Tex. Gov't [~~Texas Government~~] Code and the Code are developed to result in an [~~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 Utility Allowances used in underwriting must be in compliance with all applicable federal guidance, and §10.614 of Subchapter F of this Chapter relating to Utility Allowances. Utility allowances must be calculated for individually metered tenant paid utilities.

(v) Net Program Rents. Gross Program Rent less Utility Allowance.

(vi) Actual Rents for existing Developments will be reviewed as supported by a current rent roll. For Unstabilized Developments, actual rents will be based on the most recent units leased with occupancy and leasing velocity considered. Actual rents may be adjusted by the Underwriter to reflect lease-up concessions and other market considerations.

(vii) Collected Rent. Represents the monthly rent amount collected for each Unit Type. For rent-assisted units, the Contract Rent is used. In absence of a Contract Rent, the lesser of the Net Program Rent, Market Rent or actual rent is used.

(B) Miscellaneous Income. All ancillary fees and miscellaneous secondary income, including, but not limited to late fees, storage fees, laundry income, interest on deposits, carport and garage rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a $5 to $20 per Unit per month range. Exceptions may be made at the discretion of the Underwriter and must be supported by either the normalized operating history of the Development or other existing comparable properties within the same market area.

(i) The Applicant must show that a tenant will not be required to pay the additional fee or charge as a condition of renting a Unit and must show that the tenant has a reasonable alternative.

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

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

(iv) If an additional fee is charged for the optional use of an amenity, any cost associated with the construction, acquisition, or development of the hard assets needed to produce the 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 properties located in the same market area or region as the proposed Development also provides data points; expense data from the Department's Database is available on the Department's website. Data from the Institute of Real Estate Management's ("IREM") most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as PHA Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(A) General and Administrative Expense ("G&A"). [--] Accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. G&A does not include partnership related expenses such as asset management, accounting or audit fees. Costs of tenant services are not included in G&A.

(B) Management Fee. Fee paid to the property management company to oversee the operation of the Property and is most often based upon a percentage of EGI as documented in an existing property management agreement or proposal. Typically, 5 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) Other assessed values or property tax estimates may be used based on development specific factors as determined by the Underwriter.

(iii) [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")or, for existing USDA developments, an amount approved by USDA. The Applicant's assumption for reserves may be adjusted by the Underwriter if the amount provided by the Applicant is insufficient to fund capital needs as documented by the 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 a [~~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 to the principal amount of a Direct Loan; [~~, or~~]

(II) in the case where [~~no repayable Developer Fee remains available for deferral and~~] the amount of the Direct Loan determined in subclause (I) is insufficient [~~is necessary~~] to balance the sources and uses; [~~,~~]

(-a-) a reduction to the interest rate; [~~or~~]

(-b-) an increase in the amortization period [~~for Direct Loans~~];

~~*(II)* a reclassification of Direct Loans to reflect grants,~~]

(III) an assumed [~~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;~~]

(I) [~~(II)~~] an increase to [~~in~~] the interest rate up to the highest interest rate on any senior debt or if no senior debt a market rate determined by the Underwriter based on current market interest rates;

(II) or a decrease in the amortization period but not less than thirty (30) years [~~for Direct Loans~~];

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

(iii) For Housing Tax Credit Developments, a reduction in the recommended Housing Credit Allocation Amount may be made based on the Gap Method described in subsection (c)(2) of this section as a result of an increased debt assumption, if any.

(iv) For Developments financed with a Direct Loan subordinate to FHA financing, DCR on the Direct Loan will be calculated using 75% of the Surplus Cash (as defined by the applicable FHA program).

(v) [~~(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. At Cost Certification, the underwritten acquisition cost will be the amount verified by the settlement statement. For Identity of Interest acquisitions, the cost will be limited to the underwritten acquisition cost at initial Underwriting.

(A) Excess Land Acquisition. In cases where more land is to be acquired (by the Applicant or a Related Party) than will be utilized as the Development Site and the remainder acreage is not accessible for use by tenants or dedicated as permanent and maintained green space, the value ascribed to the proposed Development Site will be prorated based on acreage from the total cost reflected in the Site Control document(s). An appraisal containing segregated values for the total acreage, the acreage for the Development Site and the remainder acreage, or tax assessment value may be used by the Underwriter in making a proration determination based on relative value; however, the Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).

(B) Identity of Interest Acquisitions.

(i) An acquisition will be considered an identity of interest transaction when an Affiliate of the seller is an Affiliate of, a Related Party to, any owner at any level of the Development Team or a Related Party lender; and

(I) is the current owner in whole or in part of the Property; or

(II) has or had within the prior 36 months, legal or beneficial ownership of the property or any portion thereof or interest therein prior to the first day of the Application Acceptance Period.

(ii) In all identity of interest transactions the Applicant is required to provide:

(I) the original acquisition cost in the most recent non-identity of interest transaction evidenced by an executed settlement statement or, if a settlement statement is not available, the original asset value listed in the most current financial statement for the identity of interest owner; and

(II) if the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost stated in the application:

(-a-) an appraisal that meets the requirements of §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 residential or non-residential buildings that will be rehabilitated or otherwise retained as part of the Development, documentation of owning, holding, or improving costs since the original acquisition date may include capitalized costs of improvements to the Property, and in the case of USDA financed Developments the cost of exit taxes not to exceed an amount necessary to allow the sellers to be made whole in the original and subsequent investment in the Property and avoid foreclosure. Additionally, an annual return of 10 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 residential or non-residential buildings are occupied or otherwise producing revenue, holding and improvement costs will [~~may~~] not include capitalized costs, operating expenses, [~~including,~~

but not limited to,] property taxes, [and] interest expense or any other cost associated with the operations of the buildings.

(C) [(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."

(D) [(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 that will continue to affect the Development after transfer to the new owner in determining the building value. These circumstances include but are not limited to operating subsidies, rental assistance and/or property tax exemptions. Any value of existing favorable financing will be attributed prorata to the land and buildings.

(2) Off-Site Costs. The Underwriter will only consider costs of Off-Site Construction that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(3) Site Work Costs. The Underwriter will only consider costs of Site Work 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 and narrative description of the work to be completed. The narrative should speak to all off-site, site work, building components including finishes and equipment, and development amenities. The narrative should be in sufficient detail so that the reader can understand the work and it should generally be arranged consistent with the line-items on the PCA Cost Schedule Supplement and must also be consistent with the development cost schedule of the Application [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. Any contractor fees to Affiliates or Related Party subcontractors regardless of the percentage of the contract sum in the construction contract(s) will be treated collectively with the General Contractor Fee limitations. For Housing Tax Credit [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 only included in Eligible Basis with documentation satisfactory to the Underwriter that the loan will be at a market interest rate, fees and loan terms and the Related Party lender can demonstrate that it is routinely engaged in construction financing to unrelated parties.

(9) Reserves. Except for the underwriting of a Housing Tax Credit Development at cost certification, the Underwriter will utilize the amount described in the Applicant's project cost schedule if it is within the range of two (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 (and only for USDA or HUD financed rehabilitation transactions the initial deposits to replacement reserves and transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Pursuant to §10.404(c) 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 as a Development Cost.

(f) Development Team Capacity and Development Plan.

(1) The Underwriter will evaluate and report on the overall capacity of the Development Team by reviewing aspects, including but not limited to those identified in subparagraphs (A) - (D) of this paragraph:

(A) personal credit reports for development sponsors, Developer fee recipients and those individuals anticipated to provide guarantee(s) in cases when warranted. The Underwriter may evaluate the credit report and identify any bankruptcy, state or federal tax liens or other relevant credit risks for compliance with eligibility and debarment requirements 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 may result in an Application being referred to the Committee by the Director of Real Estate Analysis. 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, Program Rules and NOFA, and applicable Federal or state requirements.

(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 or [~~and~~] equal to any project based rental subsidy rent to be utilized for the Development if higher than the maximum rent limits;

(B) Operating Expenses. A Supportive Housing Development may have significantly higher expenses for payroll, management fee, security, resident 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, AMGI Band Capture Rates, and Individual Unit Capture Rate. The method for determining capture rates for a Development is defined in §10.303 of this chapter. The Underwriter will independently verify all components and conclusions of the capture rates and may, at their discretion, use independently acquired demographic data to calculate demand and may make a determination of the capture rates based upon an analysis of the Sub-market. The Development:

(A) is characterized as an Elderly Development and the Gross Capture Rate or any AMGI band 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 or any AMGI band 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 or any AMGI band capture rate exceeds 30 percent; or

(D) is Supportive Housing and the Gross Capture Rate or any AMGI band capture rate exceeds 30 percent; or,

(E) has an Individual Unit Capture Rate for any Unit Type greater than 65 [~~75~~] 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, whether defined by an existing land use and rent restriction agreement or if the subject rents are at or below 50% AMI rents, 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 at any time during years two through fifteen, as defined in subsection (d)(5) of this section, reflects:

(A) a Debt Coverage Ratio below 1.15; or,

(B) negative cash flow (throughout the term of a Direct Loan).

(6) Exceptions. The infeasibility conclusions may be excepted when:

(A) Waived by the Executive Director of the Department or by the 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. A Development financed with a Direct Loan will not be re-characterized as feasible with respect to (5)(B).

(i) The Development will receive Project-based Section 8 Rental Assistance or the HUD Rental Assistance Demonstration Program for at least 50 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.

§10.303. Market Analysis Rules and Guidelines.

(a) General Provision. A Market Analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The analysis must determine the feasibility of the subject Property rental rates or sales price and state conclusions as to the impact of the Property with respect to the determined housing needs. The Market Analysis must include a statement that the report preparer has read and understood the requirements of this section. The Market Analysis must also include a statement that the person or company preparing the Market Analysis is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the Market Analysis, and that the fee is in no way contingent upon the outcome of the Market Analysis.

(b) Self-Contained. A Market Analysis prepared for the Department must allow the reader to understand the market data presented, the analysis of the data, and the conclusions derived from such data. All data presented should reflect the most current information available and the report must provide a parenthetical (in-text) citation or footnote describing the data source. The analysis must clearly lead the reader to the same or similar conclusions reached by the Market Analyst. All steps leading to a calculated figure must be presented in the body of the report.

(c) Market Analyst Qualifications. A Market Analysis submitted to the Department must be prepared and certified by an approved Qualified Market Analyst. (§2306.67055) The Department will maintain an approved Market Analyst list based on the guidelines set forth in paragraphs (1) - (3) of this subsection.

(1) The approved Qualified Market Analyst list will be updated and published annually on or about October 1st. If not listed as an approved Qualified Market Analyst by the Department, a Market Analyst may request approval by submitting items in subparagraphs (A) - (F) of this paragraph at least thirty (30) calendar days prior to the first day of the competitive tax credit Application Acceptance Period or thirty (30) calendar days prior to submission of any other application for funding for which the Market Analyst must be approved.

(A) Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships).

(B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis. A firm with multiple offices or locations must indicate all members expected to be providing Market Analysis.

(C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis.

(D) General information regarding the firm's experience including references, the number of previous similar assignments and timeframes in which previous assignments were completed.

(E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the Application Round in which each Market Analysis is submitted.

(F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted. An already approved Qualified Market Analyst will remain on the list so long as at least one (1) Market Analysis has been submitted to the Department in the previous 12 months or items (A), (B), (C) and (E) are submitted prior to October 1st. Otherwise, the Market Analyst will automatically be removed from the list.

(2) During the underwriting process each Market Analysis will be reviewed and any discrepancies with the rules and guidelines set forth in this section may be identified and require timely correction. Subsequent to the completion of the Application Round and as time permits, staff or a review appraiser will re-review a sample set of submitted market analyses to ensure that the Department's Market Analysis Rules and Guidelines are met. If it is found that a Market Analyst has not conformed to the Department's Market Analysis Rules and Guidelines, as certified to, the Market Analyst will be notified of the discrepancies in the Market Analysis and will be removed from the approved Qualified Market Analyst list.

(A) In and of itself, removal from the list of approved Market Analysts will not invalidate a Market Analysis commissioned

prior to the removal date and at least ninety (90) days prior to the first day of the applicable Application Acceptance Period.

(B) To be reinstated as an approved Qualified Market Analyst, the Market Analyst must amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the updated or new sample Market Analysis is submitted.

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

(d) Market Analysis Contents. A Market Analysis for a rental Development prepared for the Department must be organized in a format that follows a logical progression and must include, at minimum, items addressed in paragraphs (1) - (13) of this subsection.

(1) Title Page. Include Property address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of Market Analyst.

(2) Letter of Transmittal. The date of the letter must be the date the report was completed. Include Property address or location, description of Property, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject Property, and signatures of all Market Analysts authorized to work on the assignment. Include a statement that the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

(4) Market Analysis Summary. Include the Department's Market Analysis Summary exhibit.

(5) Assumptions and Limiting Conditions. Include a description of all assumptions, both general and specific, made by the Market Analyst concerning the Property.

(6) Identification of the Property. Provide a statement to acquaint the reader with the Development. Such information includes street address, tax assessor's parcel number(s), and Development characteristics.

(7) Statement of Ownership. Disclose the current owners of record and provide a three (3) year history of ownership for the subject Property.

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

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

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

[(ii) boundaries based on U.S. census tracts.]

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

[(i) a detailed narrative specific to the SMA explaining;]

[(I) how the boundaries of the SMA were determined with respect to census tracts chosen and factors for including or excluding certain census tracts in proximity to the Development;]

[(II) whether a more logical market area within the SMA exists but is not definable by census tracts and how this subsection of the SMA supports the rationale for the defined SMA, and also explains how the SMA relates to the PMA in terms of its qualitative and quantitative aspects;]

[(III) what are the specific attributes of the Development's location within the SMA that would draw prospective tenants currently residing in other areas of the SMA to relocate to the Development;]

[(IV) what are the specific attributes, if known, of the Development itself that would draw prospective tenants currently residing in other areas of the SMA to relocate to the Development; and]

[(V) other housing issues in general, if pertinent.]

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

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

(8) [(9)] Primary Market Area. A limited geographic area from which the Development is expected to draw most of its demand. The size and shape of the PMA should be reflective of proximity to employment centers, services and amenities and contain the most significant areas from which to draw demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one PMA definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)

(A) The PMA will be defined by the Market Analyst as:

(i) geographic size based on a base year population no larger than necessary to provide sufficient demand but no more than 100,000 people;

(ii) boundaries based on U.S. census tracts; and

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

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

(i) a detailed narrative specific to the PMA explaining:

(I) how the boundaries of the PMA were determined with respect to census tracts chosen and factors for including or excluding certain census tracts in proximity to the Development;

(II) whether a more logical market area within the PMA exists but is not definable by census tracts and how this subsection of the PMA supports the rationale for the defined PMA;

(III) what are the specific attributes of the Development's location within the PMA that would draw prospective tenants from [currently residing in] other areas of the PMA to relocate to the Development;

(IV) what are the specific attributes, if known, of the Development itself that would draw prospective tenants currently residing in other areas of the PMA to relocate to the Development; [~~and~~]

(V) if the PMA crosses county lines, discuss the different income and rent limits in each county and how these differing amounts would affect the demand for the Development;

(VI) for rural Developments, discuss the relative draw (services, jobs, medical facilities, recreation, schools, etc.) of the Development's immediate local area (city or populous area if no city) in comparison to its neighboring local areas (cities, or populous areas if no cities), in and around the PMA. A rural PMA should not include significantly larger more populous areas unless the analyst can provide substantiation and rationale that the tenants would migrate to the Development's location from the larger cities;

(VII) discuss and quantify current and planned single-family and non-residential construction (include permit data if available); and

(VIII) [~~(V)~~] other housing issues in general, if pertinent.

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

(iii) a scaled distance map indicating the PMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order with labels as well as the location of the subject Development and all comparable Developments. The map must indicate the total square miles of PMA; and,

(iv) a proximity table indicating distance from the Development to employment centers, medical facilities, schools, entertainment and any other amenities relevant to the potential residents and include drive time estimates.

(C) Comparable Units. Identify developments in the PMA with Comparable Units. In PMAs lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable and qualitative location adjustments. Provide a data sheet for each comparable development consisting of:

(i) development name;

(ii) address;

(iii) year of construction and year of Rehabilitation, if applicable;

(iv) property condition;

(v) Target Population;

(vi) unit mix specifying number of Bedrooms, number of baths, Net Rentable Area; and

(I) monthly rent and Utility Allowance; or

(II) sales price with terms, marketing period and date of sale;

(vii) description of concessions;

(viii) list of unit amenities;

(ix) utility structure;

(x) list of common amenities;

(xi) narrative comparison of its proximity to employment centers and services relative to targeted tenant population of the subject property; and,

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

(9) [~~(10)~~] Market Information.

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

(i) total housing;

(ii) all multi-family rental developments, including unrestricted and market-rate developments, whether existing , under construction, or proposed;

(iii) Affordable housing;

(iv) Comparable Units;

(v) Unstabilized Comparable Units; and

(vi) proposed Comparable Units.

(B) Occupancy. The occupancy rate indicated in the Market Analysis may be used to support both the overall demand conclusion for the proposed Development and the vacancy rate assumption used in underwriting the Development described in §10.302(d)(1)(C) of this chapter (relating to Underwriting Rules and Guidelines). State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:

(i) number of Bedrooms;

(ii) quality of construction (class);

(iii) Target Population; and

(iv) Comparable Units.

(C) Absorption. State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.

(D) Demographic Reports.

(i) All demographic reports must include population and household data for a five (5) year period with the year of Application submission as the base year;

(ii) All demographic reports must provide sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations;

(iii) For Elderly Developments [~~targeting seniors~~], all demographic reports must provide a detailed breakdown of households by age and by income; and

(iv) A complete copy of all demographic reports relied upon for the demand analysis, including the reference index that indicates the census tracts on which the report is based.

(E) Demand. Provide a comprehensive evaluation of the need for the proposed housing for the Development as a whole and each Unit type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available. A complete demand and capture rate analysis is required in every Market Study, regardless of the current occupancy level of an existing Development.

(i) Demographics. The Market Analyst should use demographic data specific to the characteristics of the households

that will be living in the proposed Development. For example, the Market Analyst should use demographic data specific to the elderly populations (and any other qualifying residents for Elderly Developments) to be served by [~~population for~~] an Elderly Development, if available, and should avoid making adjustments from more general demographic data. If adjustment rates are used based on more general data for any of the criteria described in subclauses (I) - (V) of this clause, they should be clearly identified and documented as to their source in the report.

(I) Population. Provide population and household figures, supported by actual demographics, for a five (5) year period with the year of Application submission as the base year.

(II) Target. If applicable, adjust the household projections for the qualifying demographic characteristics such as the minimum age of the [~~elderly~~] population to be served [~~targeted~~] by the proposed Development.

(III) Household Size-Appropriate. Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit type by number of Bedrooms proposed and rent restriction category based on 1.5 persons per Bedroom (round up).

(IV) Income Eligible. Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit Type by number of Bedrooms proposed and rent restriction category with:

(-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 40 [~~35~~] percent for the general population and 50 percent for elderly households; and

(-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for Efficiency Units.

(V) Tenure-Appropriate. Adjust the income-eligible household projections for tenure (renter or owner). If tenure appropriate income eligible target household data is available, a tenure appropriate adjustment is not necessary.

(ii) Gross Demand. Gross Demand is defined as the sum of Potential Demand from the PMA, Demand from Other Sources, and External Demand [~~Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25 percent of Gross Demand~~].

(iii) Potential Demand. Potential Demand is defined as the number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placed in service date.

(I) Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for Efficiency Units.

(II) For Developments targeting the general population:

(-a-) minimum eligible income is based on a 40 [~~35~~] percent rent to income ratio;

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

(-c-) the tenure-appropriate population for a rental Development is limited to the population of renter households.

(III) For Developments consisting solely of single family residences on separate lots with all Units having three (3) or more Bedrooms:

(-a-) minimum eligible income is based on a 40 [~~35~~] percent rent to income ratio;

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

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

(IV) Elderly Developments [~~or Supportive Housing~~]:

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

(-b-) Gross Demand includes all household sizes and both renter and owner households within the age range (and any other qualifying characteristics) to be served by the Elderly Development.

(V) Supportive Housing:

(-a-) minimum eligible income is $1; and

(-b-) households meeting the occupancy qualifications of the Development (data to quantify this demand may be based on statistics beyond the defined PMA but not outside the historical service area of the Applicant).

(VI) For Developments with rent assisted units (PBV's, PHU's):

(-a-) minimum eligible income for the assisted units is $1; and

(-b-) maximum eligible income for the assisted units is the minimum eligible income of the corresponding affordable unit.

~~*[(iv)* Demand from Secondary Market Area:]~~

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

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

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

(iv) External Demand: Assume an additional 10% of Potential Demand from the PMA to represent demand coming from outside the PMA.

(v) Demand from Other Sources:

(I) the source of additional demand and the methodology used to calculate the additional demand must be clearly stated;

(II) consideration of Demand from Other Sources is at the discretion of the Underwriter;

(III) Demand from Other Sources must be limited to households that are not included in Potential Demand; and

(IV) if households with Section 8 vouchers are identified as a source of demand, the Market Study must include:

(-a-) documentation of the number of vouchers administered by the local Housing Authority; and

(-b-) a complete demographic report for the area in which the vouchers are distributed.

(F) Employment. Provide a comprehensive analysis of employment trends and forecasts in the Primary Market Area. Analysis must discuss existing or planned employment opportunities with qualifying income ranges.

(10) [~~(11)~~] Conclusions. Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served by the Development in terms of items in subparagraphs (A) - (I) of this paragraph. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.

(A) Unit Mix. Provide a best possible unit mix conclusion based on the occupancy rates by Bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate household demand by unit type and income type within the PMA.

(B) Rents. Provide a separate Market Rent conclusion for each proposed Unit Type by number of Bedrooms and rent restriction category. Conclusions of Market Rent below the maximum Net Program Rent limit must be well documented as the conclusions may impact the feasibility of the Development under §10.302(i) of this chapter. In support of the Market Rent conclusions, provide a separate attribute adjustment matrix for each proposed Unit Type by number of Bedrooms and rental restriction category.

(i) The Department recommends use of HUD Form 92273.

(ii) A minimum of three developments must be represented on each attribute adjustment matrix.

(iii) Adjustments for concessions must be included, if applicable.

(iv) Adjustments for proximity and drive times to employment centers and services narrated in the Comparable Unit description, and the rationale for the amount of the adjustments must be included.

(v) Total adjustments in excess of 15 percent must be supported with additional narrative.

(vi) Total adjustments in excess of 25 percent indicate the Units are not comparable for the purposes of determining Market Rent conclusions.

(C) Effective Gross Income. Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.

(D) Demand:

(i) state the Gross Demand for each Unit Type by number of Bedrooms proposed and rent restriction category (*e.g.* one-Bedroom Units restricted at 50 percent of AMGI; two-Bedroom Units restricted at 60 percent of AMGI); and

(ii) state the Gross Demand for the proposed Development as a whole. If some households are eligible for more than one Unit Type due to overlapping eligible ranges for income or household size, Gross Demand should be adjusted to avoid including households more than once.

(iii) state the Gross Demand generated from each AMGI band. If some household incomes are included in more than one AMGI band, Gross Demand should be adjusted to avoid including households more than once.

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

(i) the proposed subject Units;

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

(iii) Comparable Units in previously approved [~~but Unstabilized~~] Developments in the PMA that have not achieved 90% occupancy for a minimum of 90 days.[~~;~~ ~~and~~]

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

(F) Gross Capture Rate. The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand. Refer to §10.302(i) of this chapter for feasibility criteria.

(G) Individual Unit Capture Rate. For each Unit Type by number of Bedrooms and rent restriction categories, the individual unit capture rate is defined as the Relevant Supply of proposed and unstabilized Comparable Units divided by the eligible demand for that Unit. Some households are eligible for multiple Unit Types. In order to calculate individual unit capture rates, each household is included in the capture rate for only one Unit Type.

(H) Capture Rate by AMGI Band. For each AMGI band (30%, 40%, 50%, 60%), the capture rate by AMGI band is defined as Relevant Supply of proposed and unstabilized Comparable Units divided by the eligible demand from that AMGI band. Some households are qualified for multiple income bands. In order to calculate AMGI band rates, each household is included in the capture rate for only one AMGI band.

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

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

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

(13) Appendices. Any Third Party reports including demographics relied upon by the Market Analyst must be provided in appendix form. A list of works cited including personal communications also must be provided, and the Modern Language Association (MLA) format is suggested.

(14) Qualifications. Current Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships) and any changes to items listed in §10.303(c)(1)(B) and (C) of this chapter.

(e) The Department reserves the right to require the Market Analyst to address such other issues as may be relevant to the Department's evaluation of the need for the subject Development and the provisions of the particular program guidelines.

(f) In the event that the PMA for a subject Development overlaps the PMA's of other proposed or unstabilized comparable Developments, the Underwriter may perform an extended Sub-Market analysis considering the combined PMA's and all proposed and unstabilized Units in the extended Sub-Market Area; the Gross Capture Rate from such an extended Sub-Market Area analysis may be used as the basis for a feasibility conclusion.

(g) All Applicants shall acknowledge, by virtue of filing an Application, that the Department shall not be bound by any such opinion or Market Analysis, and may substitute its own analysis and underwriting conclusions for those submitted by the Market Analyst.

§10.304. Appraisal Rules and Guidelines.

(a) General Provision. An appraisal prepared for the Department must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation. The appraisal must include a statement that the report preparer has read and understood the requirements of this section. The appraisal must include a statement that the person or company preparing the appraisal is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the appraisal and that the fee is in no way contingent upon the outcome of the appraisal.

(b) Self-Contained. An appraisal prepared for the Department must describe sufficient and adequate data and analyses to support the final opinion of value. The final value(s) must be reasonable, based on the information included. Any Third Party reports relied upon by the appraiser must be verified by the appraiser as to the validity of the data and the conclusions.

(c) Appraiser Qualifications. The qualifications of each appraiser are determined on a case-by-case basis by the Director of Real Estate Analysis or review appraiser, based upon the quality of the report itself and the experience and educational background of the appraiser. At minimum, a qualified appraiser must be appropriately certified or licensed by the Texas Appraiser Licensing and Certification Board.

(d) Appraisal Contents. An appraisal prepared for the Department must be organized in a format that follows a logical progression. In addition to the contents described in USPAP Standards Rule 2, the appraisal must include items addressed in paragraphs (1) - (12) of this subsection.

(1) Title Page. Include a statement identifying the Department as the client, acknowledging that the Department is granted full authority to rely on the findings of the report, and name and address of person authorizing report.

(2) Letter of Transmittal. Include reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, effective date of appraisal, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, and signatures of all appraisers authorized to work on the assignment including the appraiser who inspected the property. Include a statement indicating the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

(4) Disclosure of Competency. Include appraiser's qualifications, detailing education and experience.

(5) Statement of Ownership of the Subject Property. Discuss all prior sales of the subject Property which occurred within the past three (3) years. Any pending agreements of sale, options to buy, or listing of the subject Property must be disclosed in the appraisal report.

(6) Property Rights Appraised. Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered. The appropriate interest must be defined in terms of current appraisal terminology with the source cited.

(7) Site/Improvement Description. Discuss the site characteristics including subparagraphs (A) - (E) of this paragraph.

(A) Physical Site Characteristics. Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the Development Site. Include a plat map and/or survey.

(B) Floodplain. Discuss floodplain (including flood map panel number) and include a floodplain map with the subject Property clearly identified.

(C) Zoning. Report the current zoning and description of the zoning restrictions and/or deed restrictions, where applicable, and type of Development permitted. Any probability of change in zoning should be discussed. A statement as to whether or not the improvements conform to the current zoning should be included. A statement addressing whether or not the improvements could be rebuilt if damaged or destroyed, should be included. If current zoning is not consistent with the highest and best use, and zoning changes are reasonable to expect, time and expense associated with the proposed zoning change should be considered and documented. A zoning map should be included.

(D) Description of Improvements. Provide a thorough description and analysis of the improvements including size (Net Rentable Area, gross building area, etc.), number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc. All applicable forms of depreciation should be addressed along with the remaining economic life.

(E) Environmental Hazards. It is recognized appraisers are not experts in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential environmental hazards (such as discolored vegetation, oil residue, asbestos-containing materials, lead-based paint etc.) noted during the inspection.

(8) Highest and Best Use. Market Analysis and feasibility study is required as part of the highest and best use. The highest and best use analysis should consider paragraph (7)(A) - (E) of this subsection as well as a supply and demand analysis.

(A) The appraisal must inform the reader of any positive or negative market trends which could influence the value of the appraised Property. Detailed data must be included to support the appraiser's estimate of stabilized income, absorption, and occupancy.

(B) The highest and best use section must contain a separate analysis "as if vacant" and "as improved" (or "as proposed to be improved/renovated"). All four elements (legally permissible, physically possible, feasible, and maximally productive) must be considered.

(9) Appraisal Process. It is mandatory that all three approaches, Cost Approach, Sales Comparison Approach and Income Approach, are considered in valuing the Property. If an approach is not applicable to a particular property an adequate explanation must be provided. A land value estimate must be provided if the Cost Approach is not applicable.

(A) Cost Approach. This approach should give a clear and concise estimate of the cost to construct the subject improvements. The source(s) of the cost data should be reported.

(i) Cost comparables are desirable; however, alternative cost information may be obtained from Marshall & Swift Valuation Service or similar publications. The section, class, page, etc. should be referenced. All soft costs and entrepreneurial profit must be addressed and documented.

(ii) All applicable forms of depreciation must be discussed and analyzed. Such discussion must be consistent with the description of the improvements.

(iii) The land value estimate should include a sufficient number of sales which are current, comparable, and similar to the subject in terms of highest and best use. Comparable sales information should include address, legal description, tax assessor's parcel number(s), sales price, date of sale, grantor, grantee, three (3) year sales history, and adequate description of property transferred. The final value estimate should fall within the adjusted and unadjusted value ranges. Consideration and appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) of this clause should be made when applicable.

(I) Property rights conveyed.

(II) Financing terms.

(III) Conditions of sale.

(IV) Location.

(V) Highest and best use.

(VI) Physical characteristics (e.g., topography, size, shape, etc.).

(VII) Other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).

(B) Sales Comparison Approach. This section should contain an adequate number of sales to provide the reader with a description of the current market conditions concerning this property type. Sales data should be recent and specific for the property type being appraised. The sales must be confirmed with buyer, seller, or an individual knowledgeable of the transaction.

(i) Sales information should include address, legal description, tax assessor's parcel number(s), sales price, financing considerations and adjustment for cash equivalency, date of sale, recordation of the instrument, parties to the transaction, three (3) year sale history, complete description of the Property and property rights conveyed, and discussion of marketing time. A scaled distance map clearly identifying the subject and the comparable sales must be included.

(ii) The method(s) used in the Sales Comparison Approach must be reflective of actual market activity and market participants.

(I) Sale Price/Unit of Comparison. The analysis of the sale comparables must identify, relate, and evaluate the individual adjustments applicable for property rights, terms of sale, conditions of sale, market conditions, and physical features. Sufficient narrative must be included to permit the reader to understand the direction and magnitude of the individual adjustments, as well as a unit of comparison value indicator for each comparable.

(II) Net Operating Income/Unit of Comparison. The Net Operating Income statistics or the comparables must be calculated in the same manner. It should be disclosed if reserves for replacement have been included in this method of analysis. At least one other method should accompany this method of analysis.

(C) Income Approach. This section must contain an analysis of both the actual historical and projected income and expense aspects of the subject Property.

(i) Market Rent Estimate/Comparable Rental Analysis. This section of the report should include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental Units. The comparables must indicate current research for this specific property type. The comparables must be confirmed with the landlord, tenant or agent and individual data sheets must be included. The individual data sheets should include property address, lease terms, description of the property (e.g., Unit Type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics of the property, and location of the comparables. Analysis of the Market Rents should be sufficiently detailed to permit the reader to understand the appraiser's logic and rationale. Adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc. must be considered.

(ii) Comparison of Market Rent to Contract Rent. Actual income for the subject along with the owner's current budget projections must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. The Contract Rents should be compared to the market-derived rents. A determination should be made as to whether the Contract Rents are below, equal to, or in excess of market rates. If there is a difference, its impact on value must be qualified.

(iii) Vacancy/Collection Loss. Historical occupancy data and current occupancy level for the subject should be reported and compared to occupancy data from the rental comparables and overall occupancy data for the subject's Primary Market.

(iv) Expense Analysis. Actual expenses for the subject, along with the owner's projected budget, must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. Historical expenses should be compared to comparables expenses of similar property types or published survey data (such as IREM, BOMA, etc.). Any expense differences should be reconciled. Include historical data regarding the subject's assessment and tax rates and a statement as to whether or not any delinquent taxes exist.

(v) Capitalization. The appraiser should present the capitalization method(s) reflective of the subject market and explain the omission of any method not considered in the report.

(I) Direct Capitalization. The primary method of deriving an overall rate is through market extraction. If a band of investment or mortgage equity technique is utilized, the assumptions must be fully disclosed and discussed.

(II) Yield Capitalization (Discounted Cash Flow Analysis). This method of analysis should include a detailed and supportive discussion of the projected holding/investment period, income and income growth projections, occupancy projections, expense and expense growth projections, reversionary value and support for the discount rate.

(10) Value Estimates. Reconciliation of final value estimates is required. The Underwriter may request additional valuation information based on unique existing circumstances that are relevant for deriving the market value of the Property.

(A) All appraisals shall contain a separate estimate of the "as vacant" market value of the underlying land, based upon current sales comparables. The "as vacant" value assumes that there are no improvements on the property and therefore demolition costs should not be considered. The appraiser should consider the fee simple or leased fee interest as appropriate.

(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value". For public housing converting to project-based rental assistance, the appraiser must provide a value based on the future restricted rents. The

value used in the analysis may be based on the unrestricted market rents if supported by an appraisal. The Department may require that the appraisal be reviewed by a third-party appraiser acceptable to the Department but selected by the Applicant. Use of the restricted rents by the appraiser will not require an appraisal review. Regardless of the rents used in the valuation, the appraiser must consider any other on-going restrictions that will remain in place even if not affecting rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.

(C) For existing Developments with rent restrictions, the appraisal must include the "as-is as-restricted" value. In particular, the value must be based on the proposed restricted rents when deriving the value based on the income approach.

(D) For all other existing Developments, the appraisal must include the "as-is" value.

(E) For any Development with favorable financing (generally below market debt) that will remain in place and transfer to the new owner, the appraisal must include a separate value for the existing favorable financing with supporting information.

(F) If required the appraiser must include a separate assessment of personal property, furniture, fixtures, and equipment ("FF&E") and/or intangible items. If personal property, FF&E, or intangible items are not part of the transaction or value estimate, a statement to such effect should be included.

(11) Marketing Time. Given property characteristics and current market conditions, the appraiser(s) should employ a reasonable marketing period. The report should detail existing market conditions and assumptions considered relevant.

(12) Photographs. Provide good quality color photographs of the subject Property (front, rear, and side elevations, on-site amenities, interior of typical Units if available). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included. An aerial photograph is desirable but not mandatory.

(e) Additional Appraisal Concerns. The appraiser(s) must be aware of the Department program rules and guidelines and the appraisal must include analysis of any impact to the subject's value.

§10.305. Environmental Site Assessment Rules and Guidelines.

(a) General Provisions. The Environmental Site Assessments (ESA) prepared for the Department must be conducted and reported in conformity with the standards of the American Society for Testing and Materials ("ASTM"). The initial report must conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527- 13 or any subsequent standards as published). Any subsequent reports should also conform to ASTM standards and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The ESA shall be conducted by a Third Party environmental professional at the expense of the Applicant, and addressed to the Department as a User of the report (as defined by ASTM standards). Copies of reports provided to the Department which were commissioned by other financial institutions must either address Texas Department of Housing and Community Affairs as a co-recipient of the report or letters from both the provider and the recipient of the report may be submitted extending reliance on the report to the Department. The ESA report must also include a statement that the person or company preparing the ESA report will not materially benefit from the Development in any other way than receiving a fee for performing the ESA, and that the fee is in no way contingent upon the outcome of the assessment. The ESA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(b) In addition to ASTM requirements, the report must:

(1) state if a noise study is recommended for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise;

(2) provide a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the ESA or identified during the physical inspection;

(3) provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map;

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

(5) state if testing for lead in the drinking water would be required pursuant to local, state, and federal laws, or recommended due to any other consideration such as the age of pipes and solder in existing improvements. For buildings constructed prior to 1980, a report on the quality of the local water supply does not satisfy this requirement;

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

(7) identify and assess the presence of oil, gas or chemical pipelines, processing facilities, storage facilities or other potentially hazardous explosive activities on-site or in the general area of the site that could potentially adversely impact the Development. Location of these items must be shown on a drawing or map in relation to the Development Site and all existing or future improvements. The drawing must depict any blast zones (in accordance with HUD guidelines) and include HUD blast zone calculations; and

(8) include a vapor encroachment screening in accordance with Vapor Intrusion E2600-10.

(c) If the report recommends further studies or establishes that environmental hazards currently exist on the Property, or are originating off-site, but would nonetheless affect the Property, the Development Owner must act on such a recommendation, or provide a plan for either the abatement or elimination of the hazard. Evidence of action or a plan for the abatement or elimination of the hazard must be presented upon Application submittal.

(d) For Developments in programs that allow a waiver of the Phase I ESA such as an existing [a] USDA funded Development, the Development Owners are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(e) Those Developments which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms to the requirements of this section.

§10.306. Property Condition Assessment Guidelines.

(a) General Provisions. The objective of the Property Condition Assessment (PCA) for Rehabilitation Developments (excluding Reconstruction) and Adaptive Reuse Developments is to provide a self-contained report that provides an evaluation of the current conditions

of the Development, identifies a scope of work and cost estimates for both immediate and long-term physical needs, evaluates the sufficiency of the Applicant's scope of work under 10 TAC §10.302(e)(4)(B)(i) for the rehabilitation or conversion of the building(s) from a non-residential use to multifamily residential use and provides an independent review of the Applicant's proposed costs based on the scope of work. The report should be in sufficient detail for the Underwriter to fully understand current conditions, scope of work and cost estimates. It is the responsibility of the Applicant to ensure that the scope of work and cost estimates submitted in the Application is provided to the PCA author. The PCA must include a copy of the Applicant's scope of work narrative and Development Cost Schedule [~~is to provide cost estimates for repairs and replacements, and new construction of additional buildings or amenities, which are: immediately necessary repairs and replacements; improvements proposed by the Applicant as outlined in a scope of work narrative submitted by the Applicant to the PCA provider that is consistent with the scope of work provided in the Application; and expected to be required throughout the term of the Affordability Period and not less than thirty (30) years~~].

(b) The PCA must [~~prepared for the Department should~~] be conducted and reported in conformity with the American Society for Testing and Materials "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018") except as provided for in subsections (f) [~~(b)~~] and (g) [~~(c)~~] of this section. Additional information is encouraged if deemed relevant by the PCA author [~~The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section~~].

(c) The PCA must include the Department's Property Condition Assessment [~~PCA~~] Cost Schedule Supplement ("PCA Supplement"). The purpose of the PCA Supplement is to consolidate and show reconciliation of the scope of work and costs of the immediate physical needs identified by the PCA author with the Applicant's scope of work and costs provided in the Application. The consolidated scope of work and costs shown on the PCA Supplement will be used by the Underwriter in the analysis. The PCA Supplement also details the [~~which details all Rehabilitation costs and~~] projected repairs and replacements through at least thirty (30) years.

(d) The PCA must include good quality color photographs of the subject Property (front, rear, and side elevations, on-site amenities, interior of the structure). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included. An aerial photograph is desirable but not mandatory.

(e) The PCA must also include discussion and analysis of:

(1) Description of Current Conditions. For both Rehabilitation and Adaptive Reuse, the PCA must contain a detailed description with good quality photographs of the current conditions of all major systems and components of the development regardless of whether the system or component will be removed, repaired or replaced. For historic structures, the PCA must contain a description with photographs of each aspect of the building(s) that qualifies it as historic and must include a narrative explaining how the scope of work relates to maintaining the historic designation of the development. Replacement or relocation of systems and components must be described.

(2) Description of Scope of Work. The PCA must provide a narrative of the consolidated scope of work either as a stand-alone section of the report or included with the description of the current conditions for each major system and components. Any new construction must be described. Plans or drawings (that are in addition to any plans or drawings otherwise required by rule) and that relate to any part of the scope of work should be included, if available.

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

(4) [~~(2)~~] Code Compliance. The PCA must [~~should~~] review and document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Applicant to ensure that the PCA adequately considers any and all applicable federal, state, and local laws and regulations which may govern any work performed to the subject Property. For Applications requesting [~~transactions with~~] Direct Loan funding from the Department, the PCA provider must include a comparison between the local building code and the International Existing Building Code of the International Code Council [~~also evaluate cost estimates to meet the International Existing Building Code and other property standards~~];

(5) [~~(3)~~] Program Rules. The PCA must [~~should~~] assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, the Department's Uniform Physical Condition Standards, and any scoring criteria including amenities for which the Applicant may claim points;

(6) [~~(4)~~] Accessibility Requirements. The PCA report must include an analysis of compliance with the Department's accessibility requirements pursuant to Chapter 1, Subchapter B and Section 10.101 (B)(8) and include identify the specific items in the scope of work and costs needed to ensure that the Development will meet these requirements upon Rehabilitation (including conversion and Adaptive Reuse).

(7) [~~(5)~~] Reconciliation of Scope of Work and Costs. The PCA report must include the Department's PCA Cost Schedule Supplement with the signature of the PCA provider; the costs presented on the PCA Cost Schedule Supplement are expected to be consistent with both the scope of work and immediate costs identified in the body of the PCA report, and with the Applicant's scope of work and costs [~~Hard Costs~~] as presented on the Applicant's development cost schedule; any significant variation between the costs listed on the PCA Cost Schedule Supplement and the costs listed in the body of the PCA report or on the Applicant's development cost schedule must be reconciled in a narrative analysis from the PCA provider; and

(8) [~~(6)~~] Cost Estimates . The Development Cost Schedule and PCA Supplement must include all costs identified below: [~~for Repair and Replacement. It is the responsibility of the Applicant to ensure that the PCA provider is apprised of all development activities associated with the proposed transaction and consistency of the total immediately necessary and proposed repair and replacement cost estimates with the Total Housing Development Cost schedule and scope of work submitted as an exhibit of the Application.~~]

(A) Immediately Necessary Repairs and Replacement. For all Rehabilitation developments, and Adaptive Reuse developments if applicable, immediately necessary repair and replacement should be identified for systems [~~Systems~~] or components which are expected to have a remaining useful life of less than one (1) year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards [~~should be considered immediately necessary repair and replacement~~]. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.

(B) Proposed Repair, Replacement, or New Construction. If the development plan calls for additional scope of work [~~repair, replacement, or New Construction~~] above and beyond the immediate repair and replacement items described in subparagraph (A) of this paragraph, the additional scope of work [~~such items~~] must be evaluated [~~identified~~] and either the nature or source of obsolescence to be cured or improvement to the operations of the Property discussed. The PCA must provide a separate estimate of the costs associated with the additional scope of work [~~repair, replacement, or new construction which is identified as being above and beyond the immediate need~~], citing the basis or the source from which such cost estimate is derived.

(C) Reconciliation of Costs. The combined costs described in subparagraphs (A) and (B) of this paragraph should be consistent with the costs [~~Hard Costs~~] presented on the Applicant's development cost schedule and the PCA Supplement.

(D) Expected Repair and Replacement Over Time. The term during which the PCA should estimate the cost of expected repair and replacement over time must equal the lesser of thirty (30) years or the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the Property. The PCA must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The PCA must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred and no less than thirty (30) years. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5 percent per annum.

(f) [~~(b)~~] Any costs not identified and discussed in the PCA as part of subsection (a)(6), (8)(A) and (8)(B) [~~(a)(4), (5)(A) and (5)(B)~~] of this section will not be included in the underwritten Total Development Cost in the Report.

(g) [~~(c)~~] If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

(1) Fannie Mae's criteria for Physical Needs Assessments;

(2) Federal Housing Administration's criteria for Project Capital Needs Assessments;

(3) Freddie Mac's guidelines for Engineering and Property Condition Reports;

(4) USDA guidelines for Capital Needs Assessment.

(h) [~~(d)~~] The Department may consider for acceptance reports prepared according to other standards which are not specifically named in subsection (g) [~~(b)~~] of this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied.

(i) [~~(e)~~] The PCA shall be conducted by a Third Party at the expense of the Applicant, and addressed to Texas Department of Housing and Community Affairs as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address Texas Department of Housing and Community Affairs as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to Texas Department of Housing and Community Affairs.

(j) The PCA report must [~~should also~~] include a statement that the individual and/[~~person~~]or company preparing the PCA report will not materially benefit from the Development in any other way than receiving a fee for performing the PCA. Because of the Department's heavy reliance on the independent cost information, the provider must not be a Related Party to or an Affiliate of any other Development Team member. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

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

Filed with the Office of the Secretary of State on October 16, 2017.

TRD-201704142
Beau Eccles
General Counsel
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: November 26, 2017
For further information, please call: (512) 475-1895

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SUBCHAPTER E. POST AWARD AND ASSET MANAGEMENT REQUIREMENTS

10 TAC §§10.400 - 10.408

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC, Chapter 10, Subchapter E, §§10.400 - 10.408, relating to Post Award and Asset Management Requirements. The proposed amendments provide clarification and correction that will ensure accurate processing of post award activities and communicate more effectively with multifamily development owners regarding their responsibilities after funding or award by the Department.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be to enhance the State's ability to provide decent, safe, sanitary and affordable housing. There will not be any economic cost to any individuals required to comply with the amendments.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 27, 2017, until November 27, 2017, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941,

ATTN: Raquel Morales, or by email to raquel.morales@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time on NOVEMBER 27, 2017.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. The proposed amendments affect no other code, article or statute.

§10.400. Purpose.

The purpose of this Subchapter is to establish the requirements governing the post award and asset management activities associated with awards of multifamily development assistance pursuant to Tex. Gov't Code, Chapter 2306 and its regulation of multifamily funding provided through the Texas Department of Housing and Community Affairs (the "Department") as authorized by the legislature. This subchapter is designed to ensure that Developers and Development Owners of low-income Developments that are financed or otherwise funded through the Department maintain safe, decent and affordable housing for the term of the affordability period. Therefore, unless otherwise indicated in the specific section of this subchapter, any uncorrected issues of noncompliance outside of the corrective action period or outstanding fees (related to the Development subject to the request) owed to the Department, must be resolved to the satisfaction of the Department, or waived by the Board [~~must be resolved satisfactorily to the Department, EARAC or excepted by the Board~~], before a request for any post award activity described in this subchapter will be acted upon[~~completed~~].

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

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

(b) All Commitments or Determination Notices, whether reflected in the Commitment or Determination Notice or not, are made subject to full compliance with all applicable provisions of law and rule, including but not limited to the Qualified Allocation Plan, the Uniform Multifamily Rules, the Multifamily Housing Revenue Bond Rules, all provisions of Commitment and Contract, satisfactory completion of underwriting, and satisfactory resolution of any conditions of underwriting, award, and administrative deficiencies.

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

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

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

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

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

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

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

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

(a) Commitment. For Competitive HTC Developments, the Department shall issue a Commitment to the Development Owner which shall confirm that the Board has approved the Application and state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in Subchapter D of this chapter (relating to Underwriting and Loan Policy) and 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 determination of a specific amount of housing tax credits that the Development may be eligible for, 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, by the expiration of the Certificate of Reservation associated with 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 60 [~~sixty~~ ~~(60)~~] calendar days following closing on the bonds, the Development Owner must submit the documentation in subparagraphs (A) - (E) [~~(1)~~ - ~~(4)~~] of this paragraph.

(A) 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. The certificate must not be older than two years from the date of submission;

(B) 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. The certificate must not be older than two years from the date of submission;

(C) evidence that the financing has closed, such as an executed settlement statement; [~~and~~]

(D) 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); and[.]

(E) initial construction status report consisting of paragraphs (1) - (5) as outlined in subsection (h) of this section.

(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) - (8) 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) - (8) of this subsection as well as all other conditions placed upon the Application in the Commitment. Requests for an extension will be reviewed on a case by case basis as addressed in §10.405(c) [~~§10.405(d)~~] of this Subchapter and 10 TAC §13.12(1) of this title, as applicable, and a point deduction evaluation will be completed in accordance with Tex. Gov't Code §2306.6710(b)(2) and §11.9(f) of this title. Documentation to be submitted for the 10 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. If, at the time the accountant is reviewing and preparing their report, the accountant has concluded that the taxpayer's reasonably expected basis is different from the amount reflected in the Carryover Allocation agreement, then the accountant's report should reflect the taxpayer's reasonably expected basis as of the time the report is being prepared;

(2) any conditions of the Commitment or Real Estate Analysis underwriting report due at the time of 10% Test submission;

(3) evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site. 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 of this subchapter;

(4) a current survey or plat of the Development Site, prepared and certified by a duly licensed Texas Registered Professional Land Surveyor. The survey or plat must clearly delineate the flood plain boundary lines and show all easements and encroachments;

(5) for New Construction, Reconstruction, and Adaptive Reuse Developments, a certification from a Third Party civil engineer or architect stating that all necessary utilities will be available at the Development Site and that there are no easements, licenses, royalties, or other conditions on or affecting the Development that would materially or adversely impact the ability to acquire, develop, and operate as set forth in the Application. Copies of supporting documents may be required by the Department;

(6) for the Development Owner and on-site or regional property manager, 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. Certifications required under this paragraph must not be older than two years from the date of submission of the 10 Percent Test Documentation;

(7) a Certification from the lender and syndicator identifying all known Guarantors. If identified Guarantors have changed from the Guarantors or Principals identified at the time of Application, a non-material amendment 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); and

(8) 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 (All Multifamily Developments). All multifamily developments must submit a construction status report. Construction status reports shall be due by the tenth day of the month following each reporting quarter's end (January, April, July, and October) and continue on a quarterly basis until the entire development is complete as evidenced by one of the following: certificates of occupancy for each building, the Architect's Certificate(s) of Substantial Completion (AIA Document G704) for the entire development, the final Application and Certificate for Payment (AIA Document G702 and G703), or an equivalent form approved for submission by the construction lender and/or investor. For Competitive Housing Tax Credit Developments, the initial report must be submitted no later than October 10th following the year of award [~~90 days after submission of the 10 Percent Test~~] (this includes Developments funded with HTC and TDHCA Multifamily Direct Loans), [~~for Tax Exempt Bond Developments, the initial report must be submitted 90 days after expiration of the Certificate of Reservation,~~]and for Developments awarded under the Department's Multifamily Direct Loan programs only, the initial report must be submitted 90 calendar days after loan closing. For Tax Exempt Bond Developments, the initial construction status report must be submitted as part of the Post Bond Closing Documentation due no later than 60 calendar days following closing on the bonds as described in subsection (e) of this section. The initial report for all multifamily Developments shall consist of the items identified in paragraphs (1) - (5) of this subsection, unless stated otherwise. All subsequent reports shall contain items identified in paragraphs [~~subparagraphs~~] (3) - (5) of this subsection [~~paragraph~~] and must include any changes or amendments to items in paragraphs [~~subparagraphs~~] (1) - (2) if applicable:

(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. If the lender and/or investor does not require third

party construction inspection reports, the Development Owner must hire a third party inspector to perform these inspections on a quarterly basis and submit the reports to the Department. Third Party construction inspection reports must include, at a minimum, current photographs of the construction site and exterior and interior of buildings, an estimated percentage of construction completion as of the date of the site visit, identification of construction delays and other relevant progress issues, if any, and the anticipated construction completion date;

(5) Minority Owned Business Report (HTC only) showing the 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 required and further described in Tex. Gov't Code §2306.6734.

(i) LURA Origination [~~(HTC Only)~~].

(1) 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 or a copy of the 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 or a copy of the[~~,~~] 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.~~]

(2) LURAs for Direct Loan awardees will be prepared by the Department's Legal Division and executed at loan closing.

(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) - (G) 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) - (xxxvi) 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).

(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) for the General Contractor and all prime subcontractors;

(xx) Additional Documentation of Offsite Costs;

(xxi) Rent Schedule;

(xxii) Utility Allowances;

(xxiii) Annual Operating Expenses;

(xxiv) 30 Year Rental Housing Operating Pro Forma;

(xxv) Current Operating Statement in the form of a trailing twelve month statement;

(xxvi) Current Rent Roll;

(xxvii) Summary of Sources and Uses of Funds;

(xxviii) Financing Narrative;

(xxix) Final Limited Partnership Agreement with all amendments and exhibits;

(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 (not older than two years from the date of cost certification submission);

(xxxiv) TDHCA Final Inspection Clearance Letter or evidence of submitted final inspection request to the Compliance Division;

(xxxv) Completion Certificate (TDHCA Issued Bonds Only); and

(xxxvi) Other Documentation as Required, including but not limited to conditions to be satisfied at cost certification as reflected in the Development's latest Underwriting Report;

(C) informed the Department of and received written approval for all amendments, extensions, and changes in ownership relating to the Development in accordance with §10.405 of this 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, Determination Notice, and Commitment;

(F) corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject Development, as described in this chapter. Developments in the corrective action period and/or with any uncorrected issues of noncompliance outside of the corrective action period or that have had a monitoring review where noncompliance was identified, will not be issued IRS Form(s) 8609s until all events of noncompliance are assessed, 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.

§10.403. Review of Annual HOME/NSP and National Housing Trust Fund Rents.

(a) Applicability. For participants of the Department's Multifamily HOME and NSP Direct Loan program, where Commitment of Funds occurred on or after August 23, 2013, the Department is required by 24 CFR §92.252(f) and for all NHTF participants by 24 CFR §93.302(c)(2), to review and approve or disapprove HOME/NSP/NHTF rents on an annual basis. The Department is also is required by 24 CFR §92.219 and §92.252(d)(4) to approve rents where Multifamily Direct Loan funds are used as HOME match. [~~The Department is required by 24 CFR 93.302(c)(2) to review and approve or disapprove NHTF rents on an annual basis.~~] Development Owners must submit documentation for the review of HOME/NSP/NHTF rents by no later than June 1st [~~January 30th~~] of each year as further described in the Post Award Activities Manual.

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

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

(d) Compliance. Development Owners for whom this section is applicable are subject to compliance under §10.622 under Subchapter Fof this chapter (relating to Special Rules regarding Rents and Limit Violations) and may be subject to penalties under §10.624 of this chapter (relating to Events of Noncompliance). Approval of rents by the Asset Management Division will be limited to a review of the documentation submitted and will not guarantee compliance with the Department's rules in Subchapter F or otherwise absolve an Owner of any past, current, or future non-compliance related to Department rules, guidance, Compliance Monitoring visits, or any other rules or guidance to which the Development or its Owner may be subject.

§10.404. Reserve Accounts.

(a) Replacement Reserve Account (§2306.186). The Department will require Development Owners to provide regular maintenance to keep housing sanitary, safe and decent by establishing and maintaining a reserve for replacement account for the Development in accordance with Tex. Gov't Code, §2306.186. The reserve account must be established, in accordance with paragraphs (3), (4), (5), and (6) of this subsection, and maintained through annual or more frequent regularly scheduled deposits, for each Unit in a Development of 25 or more rental units regardless of the amount of rent charged for the Unit. If the Department is processing a request for loan modification or other request under this subchapter, and the Development does not have an existing replacement reserve account, or sufficient funds in the reserve to meet future capital expenditure needs of the Development as determined by a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in this section, or as indicated by the number or cost of repairs included in a PCA, the Development Owner will be required to establish and maintain a replacement reserve account or review whether the amount of regular deposits to the replacement reserve account can be increased, regardless of the number of units at the Development. The Department shall,

through cooperation of its divisions responsible for asset management and compliance, ensure compliance with this section. The duties of the Development Owner under this section cease on the date of a change in ownership of the Development; however, the subsequent Development Owner of the Development is subject to the requirements of this section and any additional or revised requirements the Department may impose after reviewing a Development's compliance history, a PCA submitted by the Owner, or the amount of reserves that will be transferred at the time of any property sale.

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

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

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

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

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

(B) date on which the Development is demolished;

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

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

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

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

(B) For Adaptive Reuse, Rehabilitation and Reconstruction Developments, the greater of the amount per Unit per year either established by the information presented in a Property Condition Assessment in conformance with Subchapter D of this chapter (relating to Underwriting and Loan Policy) or $300 per Unit per year.

(4) For all Developments, a Property Condition Assessment ("PCA") must be conducted at intervals that are consistent with requirements of the First Lien Lender, other than the Department. If the Department is the First Lien Lender, or the First Lien Lender does not require a Third Party PCA, a PCA must be conducted at least once during each five (5) year period beginning with the eleventh (11th) year after the awarding of any financial assistance from the Department. PCAs conducted by the Owner at any time or for any reason other than as required by the Department in the year beginning with the eleventh (11th) year of award must be submitted to the Department for review within 30 days of receipt by the Owner.

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

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

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

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

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

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

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

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

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

(C) money in the Reserve Account:

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

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

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

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

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

(8) Department-Initiated Repairs. The Department or its agent may make repairs to the Development within 30 calendar days of written notice from the Department if the Development Owner fails to complete necessary repairs indicated in the submitted Property Condition Assessment or identified by Department physical inspection. Repairs may be deemed necessary if the Development Owner fails to comply with federal, state, and/or local health, safety, or building code requirements. Payment for necessary repairs must be made directly by the Development Owner or through a replacement Reserve Account established for the Development under this section. The Department or its agent will be allowed to produce a Request for Bids to hire a contractor to complete and oversee necessary repairs. On a case-by-case basis, the Department may determine that the money in the Reserve Account may be used for expenses other than necessary repairs, including property taxes or insurance, if:

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

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

(C) In the event of subparagraph (A) or (B) of this paragraph, funds withdrawn must be replaced from Cash Flow after payment of Operating Expenses but before return to Development Owner or deferred developer fee until the mandatory deposit level is replenished. The Department reserves the right to re-evaluate payments to the reserve, increase such payments or require a lump sum deposit to the reserve, or require the Owner to enter into a separate Reserve Agreement if necessary to protect the long term feasibility of the Development.

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

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

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

(c) Operating Reserve Account. At various stages during the application, award process, and during the operating life of a Development, the Department will conduct a financial analysis of the Development's total development costs and operating budgets, including the estimated operating reserve account deposit required. For example, this analysis typically occurs at application and cost certification review. The Department will consider a reasonable operating reserve account deposit in this analysis based on the needs of the Development and requirements of third-party lenders or investors. The amount used in the analysis will be the amount described in the project cost schedule or balance sheet, if it is within the range of two (2) to six (6) months of stabilized operating expenses plus debt service. The Department may consider a greater amount proposed or required by the Department, any superior lien lender, or syndicator, if the detail for such greater amount is reasonable and well documented. Reasonable operating reserves in this chapter do not include capitalized asset management fees, guaranty reserves, or other similar costs. In no instance will operating reserves exceed twelve (12) months of stabilized operating expenses plus debt service (exclusive of transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Operating reserves are generally for the term of the permanent loan. In no instance will operating reserves released within five (5) years be included as a cost.

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

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

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

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

(4) Use of the funds in the Special Reserve Account is determined by a plan that is pre-approved by the Department. The Owner must create, update and maintain a plan for the disbursement of funds from the Special Reserve Account. The plan should be established at the time the account is created and updated and submitted for approval by the Department as needed. The plan should consider the needs of the tenants of the property and the existing and anticipated fund account balances such that all of the fund uses provide benefit to tenants. Disbursements from the fund will only be approved by the Department if they are in accordance with the current approved plan.

(e) Other Reserve Accounts. Additional reserve accounts may be recognized by the Department as necessary and required by the Department, superior lien lender, or syndicator.

§10.405. Amendments and Extensions.

(a) Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) recording or amendments that do not result in a change to the LURA (§2306.6712). The Department expects the Development Owner to construct or rehabilitate, operate, and own the Development consistent with the representations in the Application. The Department must receive notification of any amendments to the Application. Regardless of development stage, the Board shall re-evaluate a Development that undergoes a material change, as identified in paragraph (3) of this subsection at any time after the initial Board approval of the Development (§2306.6731(b)). The Board may deny an amendment request and subsequently may rescind any Commitment or Determination Notice issued for an Application, and may reallocate the credits to other Applicants on the waiting list.

(1) Requesting an amendment. The Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in §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) Notification Items. The Department must be notified of the changes described in subparagraphs (A) - (F) [~~(E)~~] of this paragraph. The changes identified are subject to staff agreement based on a review of the amendment request, and any additional information or documentation requested. Notification items will be considered satisfied when an acknowledgment of the specific change(s) is received from the Department.

(A) changes to Development Site acreage required by the City or other local governmental authority, or changes resulting from survey discrepancies, as long as such change does not also result in a modification to the residential density of more than 5 percent;

(B) minor modifications to the site plan that will not significantly impact development costs, including, but not limited to, relocation or rearrangement of buildings on the site (as long as the number of residential and non-residential buildings remains the same), and movement, addition, or deletion of ingress/egress to the site;

(C) increases in net rentable square footage or common areas that will not significantly impact development costs;

(D) changes in amenities that do not require a change to the recorded LURA and do not negatively impact scoring, including changes to outdated amenities that could be replaced by an amenity with equal benefit to the resident community;

(E) changes in Developers or Guarantors that do not include the addition of new entities or Principals not previously checked by Previous Participation review at the time of Application and do not result in the removal of all persons used to meet the experience requirement in §10.204(6) of this chapter (relating to Required Documentation for Application Submission);

(F) [~~(E)~~] any other amendment not identified in paragraphs (3) and (4) of this subsection.

(3) Nonmaterial amendments. The Executive Director may administratively approve all non-material amendments, including, but not limited to:

(A) any amendment that is determined by staff to exceed the scope of notification acknowledgement, as identified in paragraph (2) of this subsection but not to rise to a material alteration, as identified in paragraph (4) of this subsection;

(B) changes in the natural person(s) used to meet the experience requirement in §10.204(6) of this chapter provided that an appropriate substitute has been approved by the Multifamily Division prior to receipt of the amendment request (relating to Required Documentation for Application Submission);

(C) changes in Developers or Guarantors (to the extent Guarantors were identified in the Application) not addressed in subsection (a)(2)(E) of this section. Changes in Developers or Guarantors will be subject to Previous Participation requirements as further described in §10.204(13) and the credit limitation described in §11.4(a).

(4) Material amendments. Amendments considered material pursuant to paragraph (4) of this subsection must be approved by the Board. When an amendment request requires Board approval, the Development Owner must submit the request and all required documentation necessary for staff's review of the request to the Department at least 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); or

(H) any other modification considered significant by the Board.

(5) Amendment requests will be denied if the Department finds that the request would have changed the scoring of an Application in the competitive process such that the Application would not have received a funding award or if the need for the proposed modification was reasonably foreseeable or preventable by the Applicant at the time the Application was submitted, unless good cause is found for the approval of the amendment.

(6) This section shall be administered in a manner that is consistent with §42 of the Code. If a Development has any uncor-

rected 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, or waived by the Board, before a request for amendment will be acted upon [~~prior to approving an amendment request unless otherwise approved by the Executive Award Review and Advisory Committee~~].

(7) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants identified in the Application and Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in subparagraphs (A) and (B) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:

(A) for amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence must be presented to the Department to support the amendment. In addition, for such changes prior to issuance of IRS Forms 8609 by the Department, the lender and syndicator must submit written confirmation that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued financial feasibility of the Development; and

(B) if it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award in the year of allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for 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 or require the Development Owner to order a Market Study or appraisal at the Development Owner's expense. If a Development has any uncorrected issues of noncompliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department, waived by the Board, before a request for amendment will be acted upon. [~~LURAs will only be amended if non-compliance or outstanding payment is as prvoided in §10.405(a)(6).~~] The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), 24 CFR Part 93 (NHTF Interim Rule), Chapter 1 of this title (relating to Administrative Requirements, Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 of this title (relating to Multifamily Direct Loan Rule), Tex. Gov't Code, Chapter 2306, and the Fair Housing Act, and, for Tax-Exempt Bond Developments, compliance with their Regulatory Agreement and corresponding bond financing documents. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraph (3) of this subsection must be followed.

(1) Non-Material LURA Amendments. The Executive Director or designee may administratively approve all LURA amendments not defined as Material LURA Amendments pursuant to paragraph (2) of this subsection [~~below~~]. A non-material LURA amendment may include but is not limited to:

(A) HUB removal

(i) Removal of a HUB will only be processed as a non-material LURA amendment after the issuance of 8609s and requires that the Executive Director find that:

(I) the HUB is requesting removal of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(II) the participation by the HUB has been substantive and meaningful, or would have been substantive or meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operating of affordable housing;

(III) where the HUB will be replaced as a general partner or special limited partner and will sell its ownership interest, an ownership transfer request must be submitted as described in §10.406;

(B) a change resulting from a Department work out arrangement as recommended by the Department's Asset Management Division;[,] or

(C) a correction of error.

(2) Material LURA Amendments. Development Owners seeking LURA amendment requests that require Board approval must submit the request and all required documentation necessary for staff's review of the request to the Department at least forty-five (45) calendar days prior to the Board meeting at [~~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)). The Board must consider and approve the following material LURA amendments:

(A) reductions to the number of Low-Income Units;

(B) changes to the income or rent restrictions;

(C) changes to the Target Population;

(D) the removal of material participation by a Nonprofit Organization as further described in §10.406 of this subchapter;

(E) a change in the Right of First Refusal period as described in amended §2306.6725 of the Tex. Gov't Code;

(F) any LURA amendment deemed material by the Executive Director.

(3) Prior to staff taking a recommendation to the Board for consideration, the Development Owner must provide notice and hold a public hearing regarding the requested amendment(s) at least fifteen (15) business days prior to the scheduled Board meeting where the request will be considered. Development Owners will be required to

submit a copy of the notification with the amendment request. If a LURA [an] amendment is requested prior to issuance of IRS Forms 8609 by the Department, notification must be provided to the recipients described in subparagraphs (A) - (E) of this paragraph. If an amendment is requested after issuance of IRS Forms 8609 by the Department, notification must be provided to the recipients described in subparagraph (A) - (B) of this paragraph.

(A) each tenant of the Development;

(B) the current lender and investor;

(C) the State Senator and State Representative of the districts whose boundaries include the Development Site;

(D) the chief elected official for the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction); and

(E) the county commissioners of the county in which the Development Site is located (if the Development Site is located outside of a municipality).

(4) Contents of Notification. The notification must include, at a minimum, all of the information described in subparagraphs (A) - (D) of this paragraph.

(A) the Development Owner's name, address and an individual contact name and phone number;

(B) the Development name, address, city and county;

(C) the change(s) requested; and

(D) the date, time and location of the public hearing where the change(s) will be discussed.

(5) Verification of public hearing. Minutes of the public hearing and attendance sheet must be submitted to the Department within three (3) business days after the date of the public hearing.

(6) Approval. Once the LURA Amendment has been approved administratively or by the Board, as applicable, Department staff will provide the Development Owner with a LURA amendment for execution and recording [recordation] in the county where the Development is located.

(c) HTC Extensions. Extensions must be requested if the original deadline associated with Carryover, the 10 Percent Test (including submission and expenditure deadlines), construction status reports, 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 Tex. Gov't 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. In the event the investment limited partner has proposed a new general partner or will permanently replace the general partner, a full Ownership Transfer packet must be submitted.

(3) Changes to the investment limited partner, non-Controlling limited partner, or other non-Controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.

(4) Changes resulting from foreclosure 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 Ineligible Applicants and Applications). In addition, Principals will be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation).

(2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this Subchapter.

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein. Principals of the investment limited partner or Affiliate will be considered new Principals and will be reviewed as stated under paragraph (1) of this subsection.

(4) Simultaneous transfer or concurrent offering for sale of the General Partner's and Limited Partner's control and interest will be subject to the Ownership Transfer requirements set forth herein and will trigger a Right of First Refusal, if applicable.

(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), 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 Nonprofit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Nonprofit Organization that meets the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6706, if applicable, and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA.

(3) Exceptions to the above may be made on a case by case basis if the Development is past its Compliance Period/Federal Affordability Period, was not reported to the IRS as part of the Department's Nonprofit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this 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 or special limited 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 any case,~~] after the issuance of 8609's, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as [~~the LURA does not require such continual ownership, or~~] the procedure described [~~procedures outlined~~] in §10.405(b)(1) [~~§10.405(b)(1) - (5)~~] of this chapter (relating to Non-Material LURA Amendments[~~that require Board Approval~~]) has [~~have~~]been followed and approved. [~~All such transfers must be approved by the Executive Director and require that the Executive Director 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 pertaining to the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

(1) a written explanation outlining the reason for the request;

(2) ownership transfer information, including but not limited to the type of sale, 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) Owners Certifications with regard to materials submitted further described in the Post Award Activities Manual;

(8) detailed information describing the organizational structure, experience, and financial capacity of any party holding a controlling interest in any Principal or Controlling entity of the prospective Development Owner;

(9) evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 30 calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired;

(10) any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title, 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 the 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 or as applicable a Qualified Nonprofit Organization, as memorialized in the applicable LURA. For the purposes of this section a Qualified Nonprofit Organization also includes an entity 100% owned by a Qualified Nonprofit Organization pursuant to §42(h)(5)(C) of the Code and operated in a similar manner. 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, or as applicable a Qualified Nonprofit Organization without going through the ROFR process outlined in this section unless otherwise restricted or prohibited and only in the following circumstances:

(A) the LURA includes a 90-day ROFR and the Development Owner is selling to a Qualified Nonprofit Organization;

(B) the LURA includes a two (2) -year ROFR and the Development Owner is selling to a Qualified Nonprofit Organization that meets the definition of a Community Housing Development Organization ("CHDO") under 24 CFR Part 92, as approved by the Department; or

(C) the LURA includes a 180-day ROFR, and the Development Owner is selling to a Qualified Entity that meets the definition of a CHDO under 24 CFR Part 92, or that is controlled by a CHDO, as approved by the Department. Where the Development Owner is not required to go through the ROFR process, it must go through the ownership transfer process in accordance with §10.406.

(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, every effort will be made to harmonize the provisions. If the conflict cannot be resolved, requirements in the LURA will supersede this subchapter. If there is a conflict between the Development's LURA and Tex. Gov't Code Chapter 2306, every effort will be made to harmonize the provisions. A Development Owner may request a LURA amendment to make the ROFR provisions in the LURA consistent with Tex. Gov't Code Chapter 2306 at any time.

(3) If a LURA includes the ROFR provision, the Development Owner may not request a Preliminary Qualified Contract (if such opportunity is available under the applicable LURA and §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 Nonprofit Organization or Qualified Entity that is considered an ineligible entity under the Department's rules. In addition, ownership transfers to a Qualified Entity or as applicable a Qualified Nonprofit Organization 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 triggered upon:

(A) the Development Owner's determination to sell the Development to an entity other than as permitted in paragraph (1) of this subsection; or

(B) the simultaneous transfer or concurrent offering for sale of a General Partner's and limited partner's interest in the Development Owner's ownership structure.

(7) 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.[and]

[(C) the original ROFR language in the property's LURA has been amended, if applicable, to reflect updated provisions of Tex. Gov't Code from the 84th legislature].

(8) 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 Nonprofit Organization or Qualified Entity. The enforceability of a contractual agreement between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity may be impacted by the Development Owner's commitments at Application and recorded LURA.

(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. In either case the documentation used to establish Fair Market Value will be part of the ROFR property listing on the Department's website. 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. Documentation submitted to verify the Minimum Purchase Price calculation will be part of the ROFR property listing on the Department's website.

(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, documentation must be submitted as directed in the Post Award Activities Manual, which includes:

(1) ROFR fee as identified in §10.901 of this chapter (relating to Fee Schedule);

(2) a notice of intent to the Department and to such other parties as the Department may direct at that time;

(3) evidence and certification that the residents of the Development have been provided with a notice of intent;

(4) documentation evidencing any contractual ROFR between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity, along with evidence that such Qualified Nonprofit Organization or Qualified Entity is in good standing in the state of its organization;

(5) 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 or Qualified Nonprofit Organization that the Development Owner would like to accept, the Development Owner may execute a sales contract, conditioned upon satisfaction of the ROFR requirement, and submit the executed sales contract to establish fair market value; or

(B) if the Development Owner of the Property chooses to establish fair market value using an appraisal, the Development Owner must submit an appraisal of the Property completed during the last three (3) months prior to the date of submission of the ROFR request, establishing a value for the Property in compliance with Subchapter D of this chapter (relating to Underwriting and Loan Policy) in effect at the time of the request. The appraisal should take into account the existing and continuing requirements to operate the Property under the LURA and any other restrictions that may exist. Department staff will review all materials within thirty (30) calendar days of receipt. If, after the review, the Department does not agree with the fair market value proposed in the Development Owner's appraisal, the Department may order another appraisal at the Development Owner's expense; or

(C) if the LURA requires valuation through the Minimum Purchase Price calculation, submit documentation verifying the calculation of the Minimum Purchase Price as described in subsection (b)(2) of this section regardless of any existing offer or appraised value;

(6) description of the Property, including all amenities and current zoning requirements;

(7) copies of all documents imposing income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Property;

(8) a current title policy or a down date endorsement not older than six months prior to the date of submission of the ROFR request;

(9) the most recent Physical Needs Assessment, pursuant to Tex. Gov't Code §2306.186(e) conducted by a Third-Party;

(10) 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);

(11) the three (3) most recent consecutive audited annual operating statements, if available;

(12) 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);

(13) current and complete rent roll for the entire Property;

(14) if any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases

(d) Posting and offers. 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 or as applicable any Qualified Nonprofit Organization identified by the Development Owner as having a contractual ROFR of the Development Owner's intent to sell. Once any 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. The ROFR posting period commences on the date the Property is posted for sale on the Department's website. During the ROFR posting period, a Qualified Nonprofit Organization or Qualified Entity can submit an offer to purchase as follows:

(1) if the LURA requires a 90 day ROFR posting period with no priority for any particular kind of Qualified Nonprofit Organization or tenant organization, any Qualified Nonprofit Organization or tenant organization may submit an offer to purchase the property.

(2) If the LURA requires a two (2) -year ROFR posting period, a Qualified Nonprofit Organization may submit an offer to purchase the Property as follows:

(A) during the first six (6) months of the ROFR posting period, only a Qualified Nonprofit Organization that is a Community Housing Development Organization ("CHDO") under 24 CFR Part 92, or that is 100% owned by a CHDO, as approved by the Department, may submit an offer;

(B) during the next six (6) months of the ROFR posting period, only a Qualified Nonprofit Organization as described by Tex. Gov't Code §2306.6706, or that is 100% owned by Qualified Nonprofit Organization as described by Tex. Gov't [~~Texas Government~~] Code §2306.6706, or a tenant organization may submit an offer; and

(C) during the final twelve (12) months of the ROFR posting period, any Qualified Nonprofit Organization may submit an offer.

(3) If the LURA requires a 180-day ROFR posting period a Qualified Entity may submit an offer to purchase the Property as follows:

(A) during the first sixty (60) days of the ROFR posting period, only a Qualified Entity that is a CHDO under 24 CFR Part 92, or that is controlled by CHDO, as approved by the Department, may submit an offer;

(B) during the second sixty (60) days of the ROFR posting period, only a Qualified Entity as described by Tex. Gov't Code §2306.6706, or that is controlled by Qualified Entity as described by Tex. Gov't Code §2306.6706, or a tenant organization such may submit an offer;

(C) during the final sixty (60) days of the ROFR posting period, any Qualified Entity may submit an offer.

(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 Tex. Gov't Code, §2306.6726.

(e) Acceptance of offers. A Development Owner may accept or reject any offer received during the ROFR posting period; provided however, that to the extent the LURA gives priority to certain classifications of Qualified Nonprofit Organizations or Qualified Entities to make offers during certain portions of the ROFR posting period, the Development Owner can only negotiate a purchase contract with such classifications of entities during their respective periods. For example, during the CHDO priority period, the Development Owner may only accept an offer from and enter into negotiations with a Qualified Nonprofit Organization or Qualified Entity in that classification.

(f) Satisfaction of ROFR.

(1) A Development Owner that has posted a Property under the ROFR process is deemed to have satisfied the ROFR requirements in the following circumstances:

(A) the Development Owner does not receive any bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(B) a bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price, the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, the failure is determined to not be the fault of the Development Owner, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(C) a bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price, the Qualified Nonprofit Organization or Qualified Entity is 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, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(D) an offer from a Qualified Nonprofit Organization or Qualified Entity is received at a price below the posted ROFR offer price, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period at or above the posted ROFR offer price; or

(2) A Development Owner that has posted a Property under the ROFR process does not satisfy the ROFR requirements in the following circumstances:

(A) a bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price, and the Development Owner does not accept the offer;

(B) the LURA identifies a specific Qualified Nonprofit Organization or Qualified Entity to be the beneficiary of the ROFR, and such entity no longer exists or is no longer conducting business;

(C) a bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price, the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, the failure is determined to not be the fault of the Development Owner, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and then fails to accept any of such other offers;

(D) a bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price, the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, and such failure is determined to be the fault of the Development Owner;

(E) a bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price, the Qualified Nonprofit Organization or Qualified Entity is 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 Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and fails to accept any of such other offers; or

(F) an offer from a Qualified Nonprofit Organization or Qualified Entity is received at a price below the posted ROFR offer price, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period at or above the posted ROFR offer price, and the Development Owner fails to accept any of such offers.

(3) A Development Owner with a LURA that identifies a specific Qualified Nonprofit Organization or Qualified Entity to be the beneficiary of the ROFR will satisfy the ROFR if:

(A) the identified beneficiary is in existence and conducting business;

(B) the Development Owner offers the Development to the identified beneficiary pursuant to the terms of the ROFR;

(C) if the ROFR includes a priority for a certain type of Qualified Entity (such as a CHDO) to have the first opportunity make an offer to acquire the Development, the identified beneficiary meets such classification; and

(D) the identified entity declines to purchase the Development in writing, and such evidence is submitted to and approved by the Department.

(g) Activities Upon Satisfaction of ROFR.

(1) If a Development Owner satisfies the ROFR requirement pursuant to subsection (f)(1) - (3) of this section, it may 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 Nonprofit Organization or Qualified Entity at or above the ROFR offer price.

(2) Following notice that the ROFR requirement has been met, if the Development Owner does not post the Property for Qualified Contract in accordance with §10.408 or sell the Property to an entity that is not a Qualified Nonprofit Organization or Qualified Entity within twenty-four (24) months of the Department's written indication that the ROFR has been satisfied, the Development Owner must follow the ROFR process for any subsequent transfer.

(3) 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 offer price that is higher than the originally posted ROFR offer price until twenty-four (24) months has expired from the Department's written indication that the ROFR has not been satisfied. The Development Owner may market the Property for sale and sell the Property to a Qualified Nonprofit Organization or Qualified Entity during this twenty-four (24) month period.

(h) Sale and closing.

(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.

(2) If the closing price is materially less than the ROFR offering price or the terms and conditions of the sale change materially from what was submitted in the ROFR posting, in the Department's sole determination, the Development Owner must go through the ROFR process again with a revised ROFR offering price equal to the reduced closing price or adjusted terms and conditions based upon the revised terms, before disposing of the Property.

(i) 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)).

§10.408. Qualified Contract Requirements.

(a) General. Pursuant to §42(h)(6) of the Code, after the end of the 14th year of the Compliance Period, the Development Owner of a Development utilizing Housing Tax Credits can request that the allocating agency find a buyer at the Qualified Contract Price. If a buyer cannot be located within one (1) year, the Extended Use Period will expire. This section provides the procedures for the submittal and review of a Qualified Contract Request.

(b) Eligibility. Development Owners who received an award of credits on or after January 1, 2002, are not eligible to request a Qualified Contract prior to the thirty (30) year anniversary of the date the property was placed in service (§2306.185). Unless otherwise permitted in the LURA, Development Owners awarded credits prior to 2002 may submit a Qualified Contract Request at any time after the end of the year proceeding the last year of the Initial Affordability Period, following the Department's determination that the Development Owner is eligible. The Initial Affordability Period starts concurrently with the credit period, which begins at placement-in-service or is deferred until the beginning of the next tax year, if there is an election. Unless the Development Owner has elected an Initial Affordability Period longer than the Compliance Period, as described in the LURA, this can commence at any time after the end of the 14th year of the Compliance Period. References in this section to actions which can occur after the 14th year of the Compliance Period shall refer, as applicable, to the year preceding the last year of the Initial Affordability Period, if the Development Owner elected an Initial Affordability Period longer than the Compliance Period.

(1) If there are multiple buildings placed in service in different years, the end of the Initial Affordability Period will be based upon the date the last building placed in service. For example, if five buildings in the Development began their credit periods in 1990 and one began in 1991, the 15th year would be 2005.

(2) If a Development received an allocation in multiple years, the end of the Initial Affordability Period will be based upon the last year of a multiple allocation. For example, if a Development received its first allocation in 1990 and a subsequent allocation and began the credit period in 1992, the 15th year would be 2006.

(c) Preliminary Qualified Contract Request. All eligible Development Owners must file a Preliminary Qualified Contract Request.

(1) In addition to determining the basic eligibility described in subsection (b) of this section, the pre-request will be used to determine that:

(A) the Development does not have any uncorrected issues of noncompliance outside the corrective action period;

(B) there is a Right of First Refusal (ROFR) connected to the Development that has been satisfied;

(C) the Compliance Period has not been extended in the LURA and, if it has, the Development Owner is eligible to file a pre-request as described in paragraph (2) of this subsection; and

(2) In order to assess the validity of the pre-request, the Development Owner must submit:

(A) Preliminary Request Form;

(B) Qualified Contract Pre-Request fee as outlined in §10.901 of this chapter (relating to Fee Schedule);

(C) copy of all regulatory agreements or LURAs associated with the Property (non-TDHCA);

(D) copy of the most recent Physical Needs Assessment/Property Condition Assessment, pursuant to Tex. Gov't Code §2306.186(e), conducted by a Third Party. If the PNA/PCA identifies the need for critical repairs that significantly impact habitability and tenant safety, the identified repairs and replacements must be resolved

to the satisfaction of the Department before the Development will be considered eligible to submit a Qualified Contract Request.

(3) The pre-request will not bind the Development Owner to submit a Request and does not start the One (1) Year Period (1YP). A review of the pre-request will be conducted by the Department within ninety (90) days of receipt of all documents and fees described in paragraph (2) of this subsection. If the Department determines that this stage is satisfied, a letter will be sent to the Development Owner stating that they are eligible to submit a Qualified Contract (QC) Request.

(d) Qualified Contract Request. A Development Owner may file a QC Request anytime after written approval is received from the Department verifying that the Development Owner is eligible to submit the Request.

(1) Documentation that must be submitted with a Request is outlined in subparagraphs (A) - (P) of this paragraph:

(A) a completed application and certification;

(B) the Qualified Contract price calculation worksheets completed by a Third-Party certified public accountant (CPA). The CPA shall certify that they have reviewed annual partnership tax returns for all years of operation, loan documents for all secured debt, and partnership agreements. They shall also certify that they are not being compensated for the assignment based upon a predetermined outcome;

(C) a thorough description of the Development, including all amenities;

(D) a description of all income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Development;

(E) a current title report;

(F) a current appraisal with the effective date within six months of the date of the QC Request and consistent with Subchapter D of this chapter (relating to Underwriting and Loan Policy);

(G) a current Phase I Environmental Site Assessment (Phase II if necessary) with the effective date within six months of the date of the QC Request and consistent with Subchapter D of this chapter;

(H) a copy of the most recent Physical Needs Assessment of the property conducted by a Third Party, if different from the assessment submitted during the preliminary qualified contract request, consistent with Subchapter D of this chapter and in accordance with the requirement described in Tex. Gov't Code, §2306.186(e);

(I) a copy of the monthly operating statements for the Development for the most recent twelve (12) consecutive months;

(J) the three most recent consecutive annual operating statements;

(K) a detailed set of photographs of the development, including interior and exterior of representative units and buildings, and the property's grounds (including digital photographs that may be easily displayed on the Department's website);

(L) a current and complete rent roll for the entire Development;

(M) a certification that all tenants in the Development have been notified in writing of the request for a Qualified Contract. A copy of the letter used for the notification must also be included;

(N) if any portion of the land or improvements is leased, copies of the leases;

(O) the Qualified Contract Fee as identified in §10.901 of this chapter; and

(P) additional information deemed necessary by the Department.

(2) Unless otherwise directed by the Department pursuant to subsection (g) of this section, the Development Owner shall contract with a broker to market and sell the Property. The Department may, at its sole discretion, notify the Owner that the selected Broker is not approved by the Department. The fee for this service will be paid by the seller, not to exceed six percent of the QC Price.

(3) Within 90 days of the submission of a complete Request, the Department will notify the Development Owner in writing of the acceptance or rejection of the Development Owner's QC Price calculation. The Department will have one (1) year from the date of the acceptance letter to find a Qualified Purchaser and present a QC. The Department's rejection of the Development Owner's QC Price calculation will be processed in accordance with subsection (e) of this section and the 1YP will commence as provided therein.

(e) Determination of Qualified Contract Price. The QC Price calculation is not the same as the Minimum Purchase Price calculation for the ROFR. The CPA contracted by the Development Owner will determine the QC Price in accordance with §42(h)(6)(F) of the Code taking the following into account:

(1) distributions to the Development Owner of any and all cash flow, including incentive management fees and reserve balance distributions or future anticipated distributions, but excluding payments of any eligible deferred developer fee. These distributions can only be confirmed by a review of all prior year tax returns for the Development;

(2) all equity contributions will be adjusted based upon the lesser of the consumer price index or 5 percent for each year, from the end of the year of the contribution to the end of year fourteen or the end of the year of the request for a QC Price if requested at the end of the year or the year prior if the request is made earlier than the last year of the month; and

(3) these guidelines are subject to change based upon future IRS Rulings and/or guidance on the determination of Development Owner distributions, equity contributions and/or any other element of the QC Price.

(f) Appeal of Qualified Contract Price. The Department reserves the right, at any time, to request additional information to document the QC Price calculation or other information submitted. If the documentation does not support the price indicated by the CPA hired by the Development Owner, the Department may engage its own CPA to perform a QC Price calculation and the cost of such service will be paid for by the Development Owner. If a Development Owner disagrees with the QC Price calculated by the Department, a Development Owner may appeal in writing. A meeting will be arranged with representatives of the Development Owner, the Department and the CPA contracted by the Department to attempt to resolve the discrepancy. The 1YP will not begin until the Department and Development Owner have agreed to the QC Price in writing. Further appeals can be submitted in accordance with §10.902 of this title (relating to Appeals Process (§2306.0321; §2306.6715)).

(g) Marketing of Property. By submitting a Request, the Development Owner grants the Department the authority to market the Development and provide Development information to interested parties. Development information will consist of pictures of the Development, location, amenities, number of Units, age of building, etc. Development Owner contact information will also be provided to interested

parties. The Development Owner is responsible for providing staff any requested information to assist with site visits and inspections. Marketing of the Development will continue until such time that a Qualified Contract is presented or the 1YP has expired. Notwithstanding subsection (d)(2) of this section, the Department reserves the right to contract directly with a Third Party in marketing the Development. Cost of such service, including a broker's fee not to exceed 6 percent, will be paid for by the existing Development Owner. The Department must have continuous cooperation from the Development Owner. Lack of cooperation will cause the process to cease and the Development Owner will be required to comply with requirements of the LURA for the remainder of the Extended Use Period. A prospective purchaser must complete all requirements of an ownership transfer request and be approved by the Department prior to closing on the purchase. Responsibilities of the Development Owner include but are not limited to the items described in paragraphs (1) - (3) of this subsection. The Development Owner must:

(1) allow access to the Property and tenant files;

(2) keep the Department informed of potential purchasers; and

(3) notify the Department of any offers to purchase.

(h) Presentation of a Qualified Contract. If the Department finds a Qualified Purchaser willing to present an offer to purchase the property for an amount at or above the QC Price, the Development Owner may accept the offer and enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase. If the Development Owner chooses not to accept the QC offer that the Department presents, the QC request will be closed and the possibility of terminating the Extended Use Period through the Qualified Contract process is eliminated; the Property remains bound by the provisions of the LURA. If the Development Owner decides to sell the development for the QC Price pursuant to a QC, the consummation of such a sale is not required for the LURA to continue to bind the Development for the remainder of the Extended Use Period.

(1) The Department will attempt to procure a QC only once during the Extended Use Period. If the transaction closes under the contract, the new Development Owner will be required to fulfill the requirements of the LURA for the remainder of the Extended Use Period.

(2) If the Department fails to present a QC before the end of the 1YP, the Department will file a release of the LURA and the Development will no longer be restricted to low-income requirements and compliance. However, in accordance with §42(h)(6)(E)(ii) of the Code, for a three (3) year period commencing on the termination of the Extended Use Period, the Development Owner may not evict or displace tenants of Low-Income Units for reasons other than good cause and will not be permitted to increase rents beyond the maximum tax credit rents. Additionally, the Development Owner should submit to the Department a request to terminate the LURA and evidence, in the form of a signed certification and a copy of the letter, to be approved by the Department, that the tenants in the Development have been notified in writing that the LURA will be terminated and have been informed of their protections during the three (3) year time frame.

(3) Prior to the Department filing a release of the LURA, the Development Owner must correct all instances of noncompliance at the Development.

(i) Compliance Monitoring during Extended Use Period. For Developments that continue to be bound by the LURA and remain affordable after the end of the Compliance Period, the Department will monitor in accordance with the Extended Use Period Compliance Policy in Subchapter F of this Chapter (relating to Compliance Monitoring).

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

Filed with the Office of the Secretary of State on October 13, 2017.

TRD-201704112
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: November 26, 2017
For further information, please call: (512) 475-2109

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CHAPTER 12. MULTIFAMILY HOUSING REVENUE BOND RULES

10 TAC §§12.1, 12.3 - 12.10

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 12, §§12.1, 12.3 - 12.10, concerning the 2018 Multifamily Housing Revenue Bond Rules. The Multifamily Housing Revenue Bond Rules outline the threshold and scoring related requirements associated with private activity bond funding from the Department. The proposed amendments will improve the 2018 Private Activity Bond Program.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated, as a result of the amendment, will be improved efficiency in the 2018 Private Activity Bond Program. There will not be any additional economic cost to any persons required to comply with the amendments.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 27, 2017 through November 12, 2017, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Shannon Roth, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-1895.

ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time November 12, 2017.

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

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

§12.1. General.

(a) Authority. The rules in this chapter apply to the issuance of multifamily housing revenue bonds ("Bonds") by the Texas Department of Housing and Community Affairs ("Department"). The Department is authorized to issue Bonds pursuant to Tex. Gov't Code, Chapter 2306. Notwithstanding anything in this Chapter to the contrary, Bonds which are issued to finance the Development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Tex. Gov't Code, Chapters 1372 and 2306, and federal law pursuant to the requirements of Internal Revenue Code ("Code"), §142.

(b) General. The purpose of this chapter is to state the Department's requirements for issuing Bonds, the procedures for applying for Bonds and the regulatory and land use restrictions imposed upon Bond financed Developments. The provisions contained in this chapter are separate from the rules relating to the Department's administration of the Housing Tax Credit program. Applicants seeking a Housing Tax Credit Allocation should consult Chapter 11 of this title (relating to the Housing Tax Credit Program Qualified Allocation Plan) and Chapter 10 of this title (relating to Uniform Multifamily Rules) for the current program year. In general, the Applicant will be required to satisfy the requirements of the Qualified Allocation Plan ("QAP") and Uniform Multifamily Rules in effect at the time the Certificate of Reservation is issued by the Texas Bond Review Board ("TBRB"). If the applicable QAP or Uniform Multifamily Rules contradict rules set forth in this Chapter, the applicable QAP or Uniform Multifamily Rules will take precedence over the rules in this Chapter. The Department encourages participation in the Bond program by working directly with Applicants, lenders, Bond Trustees, legal counsels, local and state officials and the general public to conduct business in an open, transparent and straightforward manner.

(c) Costs of Issuance. The Applicant shall be responsible for payment of all costs related to the preparation and submission of the pre-application and Application, including but not limited to, costs associated with the publication and posting of required public notices and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any point [~~stage~~] during the process, the Applicant is solely responsible for determining whether to proceed with the Application and the Department disclaims any and all responsibility and liability in this regard.

(d) Taxable Bonds. The Department may issue taxable Bonds and the requirements associated with such Bonds, including occupancy requirements, shall be determined by the Department on a case by case basis.

(e) Waivers. Requests for waivers of program rules must be made in accordance with §10.207 of this title (relating to Waiver of Rules [~~for Applications~~]).

§12.3. Bond Rating and Investment Letter.

(a) Bond Ratings. All publicly offered Bonds issued by the Department to finance Developments shall have a debt rating the equivalent of at least an "A" rating assigned to long-term obligations by Standard & Poor's Ratings Services, [~~a division of The McGraw-Hill Companies, Inc.~~] or Moody's Investors Service, Inc. If such rating is based upon credit enhancement provided by an institution other than the Applicant or Development Owner, the form and substance of such credit enhancement shall be subject to approval by the Board, evidenced by a resolution authorizing the issuance of the credit enhanced Bonds.

(b) Investment Letters. Bonds rated less than "A," or Bonds which are unrated must be placed with one or more Institutional Buyers and must be accompanied by an investor letter acceptable to the Department. Subsequent purchasers of such Bonds shall also be qualified as Institutional Buyers and shall execute and deliver to the Department an investor letter in a form satisfactory to the Department. Bonds rated less than "A" and Bonds which are unrated shall be issued in physical form, in minimum denominations of one hundred thousand dollars ($100,000), and shall carry a legend requiring any purchasers of the Bonds to sign and deliver to the Department an investor letter in a form acceptable to the Department.

§12.4. Pre-Application Process and Evaluation.

(a) Pre-Inducement Questionnaire. Prior to the filing of a pre-application, the Applicant shall submit the Pre-Inducement Questionnaire, in the form prescribed by the Department, so the Department can get a preliminary understanding of the proposed Development plan before a pre-application and corresponding fees are submitted. Information requested by the Department in the questionnaire includes, but is not limited to, the financing structure, borrower and key principals, previous housing tax credit or private activity bond experience, related party or identity of interest relationships and contemplated scope of work (if proposing Rehabilitation). After reviewing the pre-inducement questionnaire, Department staff will follow-up with the Applicant to discuss the next steps in the process and may schedule a pre-inducement conference call or meeting. Prior to the submission of a pre-application, it is essential that the Department and Applicant communicate regarding the Department's objectives and policies in the development of affordable housing throughout the State using Bond financing. The acceptance of the questionnaire by the Department does not constitute a pre-application or Application and does not bind the Department to any formal action regarding an inducement resolution.

(b) Undesirable Neighborhood Characteristics. If the Development Site has any of the characteristics described in §10.101(a)(3)(B) of this title (relating to Site and Development Requirements and Restrictions), the Applicant must disclose the presence of such characteristics to the Department. Disclosure may be done at time of pre-application and handled in connection with the inducement or it can be addressed at the time of Application submission. The Applicant understands that any determination made by staff or the Board at the time of bond inducement regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the undesirable neighborhood characteristics become available while the full Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. The Application may be subject to termination should staff conclude that the Development Site has any characteristics found in §10.101(a)(3)(B) of this title (relating to Site and Development Requirements and Restrictions) and the Applicant failed to disclose.

(c) Pre-Application Process. An Applicant who intends to pursue Bond financing from the Department shall submit a pre-application by the corresponding pre-application submission deadline, as set forth by the Department. The required pre-application fee as described in §12.10 of this chapter (relating to Fees) must be submitted with the pre-application in order for the pre-application to be accepted by the Department. Department review at the time of the pre-application is limited and not all issues of eligibility and documentation submission requirements pursuant to Chapter 10 of this title (relating to Uniform Multifamily Rules) are reviewed. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or other deficiencies at the time of pre-application. If the Development meets the criteria as described in §12.5 of this chapter (relating to Pre-Application Threshold Requirements), the pre-application will be scored and ranked according to the selection criteria as described in §12.6 of this chapter (relating to Pre-Application Scoring Criteria).

(d) Scoring and Ranking. The Department will rank the pre-application according to score within each priority defined by Tex. Gov't Code, §1372.0321. All Priority 1 pre-applications will be ranked above all Priority 2 pre-applications which will be ranked above all Priority 3 pre-applications. This priority ranking will be used throughout the calendar year. The selection criteria, as further described in §12.6 of this Chapter, reflect a structure which gives priority consideration to specific criteria as outlined in Tex. Gov't Code, §2306.359. Should [~~In the event~~] two or more pre-applications receive the same score, the [~~Department will use the~~] tie breaker will go to the pre-application with the highest number of points achieved under §12.6(8) [~~factors as outlined in §11.7~~] of this chapter [~~title~~] (relating to Underserved Area) [~~Tie Breaker Factors) in the order they are presented~~] to determine which pre-application will receive preference in consideration of a Certificate of Reservation.

(e) Inducement Resolution. After the pre-applications have been scored and ranked, the pre-application will be presented to the Department's Board for consideration of an inducement resolution declaring the Department's initial intent to issue Bonds with respect to the Development. Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff may recommend that the Board not approve an inducement resolution for a pre-application or that an inducement resolution be approved despite the presence of undesirable neighborhood characteristics not fully evaluated by staff. The Applicant recognizes the risk involved in moving forward should this be the case and the Department assumes no responsibility or liability in that regard. Each Development is unique, and therefore, making the final determination to issue Bonds is often dependent on the issues presented at the time the full Application is considered by the Board.

§12.5. Pre-Application Threshold Requirements.

The threshold requirements of a pre-application include the criteria listed in paragraphs (1) - (8) of this section. As the Department reviews the pre-application the assumptions as reflected in Chapter 10, Subchapter D of this title (relating to Underwriting and Loan Policy) will be utilized even if not reflected by the Applicant in the pre-application.

(1) Submission of the multifamily bond pre-application in the form prescribed by the Department;

(2) Completed Bond Review Board Residential Rental Attachment for the current program year;

(3) Site Control, evidenced by the documentation required under §10.204(10) of this title (relating to Required Documentation for Application Submission). The Site Control must be valid through the date of the Board meeting at which the inducement resolution is considered and must meet the requirements of §10.204(10) of this title at the time of Application;

(4) Boundary survey or plat clearly identifying the location and boundaries of the subject Property;

(5) Organizational Chart showing the structure of the Development Owner and of any Developer and Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable. The List of Organizations form, as provided in the pre-application, must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development;

(6) Distribution List Form, as provided in the pre-application, to include the anticipated financing participants;

(7) Evidence of Entity Registration or Reservation with the Texas Office of the Secretary of State;

(8) A certification, as provided in the pre-application, that the Applicant met the requirements and deadlines for public notifications as identified in §10.203 of this title (relating to Public Notifications (§2306.6705(9)). Notifications must not be older than three (3) months prior to the date of Application submission. Re-notification will be required by Applicants who have submitted a change from pre-application to Application that reflects a total Unit increase of greater than 10 percent or a 5 percent increase in density (calculated as Units per acre) as a result of a change in the size of the Development Site. In addition, should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official no later than the Full Application Delivery Date.

§12.6. Pre-Application Scoring Criteria.

This section identifies the scoring criteria used in evaluating and ranking pre-applications. The criteria identified below include those items required under Tex. Gov't Code, §2306.359 and other criteria considered important by the Department. Any scoring items that require supplemental information to substantiate points must be submitted in the pre-application, as further outlined in the Multifamily Bond Pre-Application Procedures Manual. Applicants proposing multiple sites will be required to submit a separate pre-application for each Development Site. Each Development Site will be scored on its own merits and the final score will be determined based on an average of all of the individual scores.

(1) Income and Rent Levels of the Tenants. Pre-applications may qualify for up to (10 points) for this item.

(A) Priority 1 designation includes one of clauses (i) - (iii) of this subparagraph. (10 points)

(i) Set aside 50 percent of Units rent capped at 50 percent AMGI and the remaining 50 percent of Units rent 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 State Restrictive Period for a Development to a total of thirty-five (35) years.

(5) Unit and Development Construction 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 State Restrictive Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of (3 points).

(6) Common Amenities. All Developments must provide at least the minimum threshold of points for common amenities based on the total number of Units in the Development as provided in subparagraphs (A) - (F) of this paragraph. The common amenities include those listed in §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)(xxxii) 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 State Restrictive Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. 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. These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider.

(8) Underserved Area. An Application may qualify to receive up to (2 points) if the Development Site is located in an Underserved Area as further described in §11.9(c)(5)(A) - (E) [~~§11.9(e)(6)(A) - (E)~~] of this title. The pre-application must include evidence that the Development Site meets this requirement.

(9) Development Support/Opposition. (Maximum +24 to -24 points) Each letter will receive a maximum of +3 to -3 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) A pre-application may receive points if the Development Site is located in an area de-

clared a disaster area under Tex. Gov't Code §418.014 at the time of submission, or at any time within the two-year period preceding the date of submission. [~~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 Tex. Gov't Code, §418.014.~~]

§12.7. Full Application Process.

(a) Application Submission. Once the inducement resolution has been approved by the Board, an Applicant who elects to proceed with submitting a full Application to the Department must submit the complete tax credit Application pursuant to §10.201 of this title (relating to Procedural Requirements for Application Submission).

(b) Eligibility Criteria. The Department will evaluate the Application for eligibility and threshold at the time of full Application pursuant to Chapter 10 of this title (relating to Uniform Multifamily Rules). If there are changes to the Application at any point prior to closing that have an adverse affect on the score and ranking order and that would have resulted in the pre-application being placed below another pre-application in the ranking, the Department will terminate the Application and withdraw the Certificate of Reservation from the Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). The Development and the Applicant must satisfy the requirements set forth in Chapter 10 of this title (relating to Uniform Multifamily Rules) and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) in addition to Tex. Gov't Code, Chapter 1372, the applicable requirements of Tex. Gov't Code, Chapter 2306, and the Code. The Applicant will also be required to select a Bond Trustee from the Department's approved list as published on its website.

(c) Bond Documents. Once the Application has been submitted and the Applicant has deposited funds to pay initial costs, the Department's bond counsel shall draft Bond documents.

(d) Public Hearings. The [~~For every Bond issuance, the~~] Department will hold a public hearing [~~in order~~] to receive comments from the public pertaining to the Development and the issuance of the Bonds. The Applicant or member of the Development Team must be present at the public hearing and will be responsible for conducting a brief presentation on the proposed Development and providing handouts at the hearing that should include [~~contain~~] at [a] minimum, a description of the Development, maximum rents and income restrictions. If the proposed Development is Rehabilitation, [~~then~~] the presentation should include the proposed scope of work that is planned for the Development. The [~~All~~] handouts must be submitted to the Department for review at least two (2) days prior to the public hearing. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant, as well as any facility rental fees or required deposits.

(e) Approval of the Bonds. Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board, upon presentation by Department staff, will consider the approval of the final Bond resolution relating to the issuance, final Bond documents and in the instance of privately placed Bonds, the pricing, terms and interest rate of the Bonds. The process for appeals and grounds for appeals may be found under §1.7 of this title (relating to Staff Appeals Process) and §1.8 of this title (relating to Board Appeals Process). To the extent applicable to each specific Bond issuance, the Department's conduit multifamily Bond transactions will be processed in accordance with 34 TAC Part 9, Chapter 181, Subchapter A (relating to Bond Review Board Rules) and Tex. Gov't Code, Chapter 1372.

(f) Local Permits. Prior to closing on the Bond financing, all necessary approvals, including building permits from local municipalities, counties, or other jurisdictions with authority over the Development Site must have been obtained or evidence that the permits are obtainable subject only to payment of certain fees must be submitted to the Department.

§12.8. Refunding Application Process.

(a) Application Submission. Owners who wish to refund or modify tax-exempt bonds that were previously issued by the Department must submit to the Department a summary of the proposed refunding plan or modifications. To the extent such modifications constitute a re-issuance under state law the Applicant shall then be required to submit a refunding Application in the form prescribed by the Department pursuant to the Bond Refunding Application Procedures Manual.

(b) Bond Documents. Once the Department has received the refunding Application and the Applicant has deposited funds to pay initial costs, the Department's bond counsel will draft the necessary Bond documents.

(c) Public Hearings. Depending on the proposed modifications to existing Bond covenants a public hearing may be required. Such hearing must take place prior to obtaining Board approval and must meet the requirements pursuant to §12.7(d) of this chapter (relating to Full Application Process) regarding the presence of a member of the Development Team and providing a summary of proposed Development changes.

(d) Rule Applicability. Refunding Applications must meet the requirements pursuant to Chapter 10 of this title (relating to Uniform Multifamily Rules) and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) with the exception of criteria stated therein specific to the Competitive Housing Tax Credit Program. At the time of the original award the Application would have been subject to eligibility and threshold requirements under the QAP in effect the year the Application was awarded. Therefore, it is anticipated the Refunding Application would not be subject to the site and development requirements and restrictions pursuant to §10.101 of this title (relating to Site and Development Requirements and Restrictions). The circumstances surrounding a refunding Application are unique to each Development; therefore, upon evaluation of the refunding Application, the Department is authorized to utilize its discretion in the applicability of the Department's rules as it deems appropriate.

§12.9. Occupancy Requirements. [~~Regulatory and Land Use Restrictions~~]

(a) Filing and Term of Regulatory Agreement. A Bond Regulatory and Land Use Restriction Agreement will be filed in the property records of the county in which the Development is located for each Development financed from the proceeds of Bonds issued by the Department. The term of the Regulatory Agreement will be based on the criteria as described in paragraphs (1) - (3) of this subsection, as applicable:

(1) the longer of thirty (30) years, from the date the Development Owner takes legal possession of the Development;

(2) the end of the remaining term of the existing federal government assistance pursuant to Tex. Gov't Code, §2306.185; or

(3) the period required by the Code.

(b) Federal Set Aside Requirements.

(1) Developments which are financed from the proceeds of Private Activity Bonds must be restricted under one of the two minimum set-asides as described in subparagraphs (A) and (B) of this paragraph:

(A) at least 20 percent of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 50 percent of the area median income; or

(B) at least 40 percent of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 60 percent of the area median income.

(2) The Development Owner must designate at the time of Application which of the two federal set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with Tex. Gov't Code, §1372.0321. The Regulatory Agreement will reflect the income and rent limits as identified in the Department's Underwriting Report, constituting the eligible tenants of the Development and monitored as such by the Department. Units intended to satisfy set-aside requirements must be distributed equally throughout the Development, and must include a reasonably proportionate amount of each type of Unit available in the Development.

(3) No tenant qualifying under either of the minimum federal set-asides shall be denied continued occupancy of a Unit in the Development because, after commencement of such occupancy, such tenant's income increases to exceed the qualifying limit.[; ~~provided, however, that~~] However, should a tenant's income, as of the most recent determination thereof, exceed 140 percent of the applicable federal set-aside income limit and such tenant constitutes a portion of the set-aside requirement of this section, then such tenant shall only continue to qualify for so long as no Unit of comparable or smaller size is rented to a tenant that does not qualify as a Low-Income Tenant.

§12.10. Fees.

(a) Pre-Application Fees. The Applicant is required to submit, at the time of pre-application, the following fees: $1,000 (payable to TDHCA), $2,500 (payable to the Department's bond counsel) and $5,000 (payable to the Texas Bond Review Board (TBRB) [~~(BRB)~~] pursuant to Tex. Gov't Code, §1372.006(a)). These fees cover the costs of pre-application review by the Department, its bond counsel and filing fees associated with the Certificate of Reservation to the TBRB [~~BRB~~].

(b) Application Fees. At the time of Application the Applicant is required to submit a tax credit application fee of $30 per Unit based on the total number of Units and a [~~$10,000 for the~~] bond application fee of $20 per Unit based on the total number of Units [~~(for multiple site Applications the application fee shall be $10,000 or $30 per Unit based on the total number of Units, whichever is greater)~~]. Such fees cover the costs associated with Application review and the Department's expenses in connection with providing financing for a Development. For Developments proposed to be structured as part of a portfolio the bond [~~such~~] application fees may be reduced on a case by case basis at the discretion of the Executive Director.

(c) Closing Fees. The closing fee for Bonds, other than refunding Bonds is equal to 50 basis points (0.005) of the issued principal amount of the Bonds. The Applicant will also be required to pay at closing of the Bonds the first two years of the administration fee equal to 20 basis points (0.002) of the issued principal amount of the Bonds and a Bond compliance fee equal to $25/Unit (excludes market rate Units). Such compliance fee shall be applied to the third year following closing.

(d) Application and Issuance Fees for Refunding Applications. For refunding Applications the application fee will be $10,000 unless the refunding is not required to have a public hearing, in which case the fee will be $5,000. The closing fee for refunding Bonds is equal to 25 basis points (0.0025) of the issued principal amount of the refunding Bonds. If applicable, administration and compliance fees due at closing may be prorated based on the current billing period of such fees. If additional volume cap is being requested other fees may be required as further described in the Bond Refunding Applications Procedures Manual.

(e) Administration Fee. The annual administration fee is equal to 10 basis points (0.001) of the outstanding bond amount on its date of calculation and is paid as long as the Bonds are outstanding.

(f) Bond Compliance Fee. The Bond compliance monitoring fee is equal to $25/Unit (excludes market rate Units), and is paid for the duration of the State Restrictive Period under the Regulatory Agreement.

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

Filed with the Office of the Secretary of State on October 13, 2017.

TRD-201704113
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: November 26, 2017
For further information, please call: (512) 475-3929

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CHAPTER 13. MULTIFAMILY DIRECT LOAN RULE

10 TAC §§13.1 - 13.13

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC §§13.1 - 13.12 and proposes new 10 TAC §13.13 concerning the Multifamily Direct Loan Program Rule. The proposed amendments and new section clarify program requirements.

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

PUBLIC BENEFIT/ COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments and new section are in effect, the public benefit anticipated, as a result of the amendments and new section, will be improved efficiency in reviewing an application for multifamily funding. There will not be any additional economic cost to any persons required to comply with the amendments or new section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 27, 2017, through November 27, 2017, to receive input on the amendments and new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Andrew Sinnott, Rule Comments,

P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-1895.

ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time November 27, 2017.

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

The proposed amendments and new section affect no other code, article, or statute.

§13.1. Purpose.

(a) Authority. The rules in this Chapter apply to the funds provided to Multifamily Developments through the Multifamily Direct Loan Program ("MFDL" or "Direct Loan Program") by the Texas Department of Housing and Community Affairs ("Department"). Notwithstanding anything in this Chapter to the contrary, loans and grants issued to finance the Development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Tex. Gov't Code, Chapter 2306 (sometimes referred to as the "State Act"), and federal law pursuant to the requirements of Title II of the Cranston-Gonzalez National Affordable Housing Act, Division B, Title III of the Housing and Economic Recovery Act (HERA) of 2008 - Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes, Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act: Additional Assistance for Neighborhood Stabilization Programs, Title I of the Housing and Economic Recovery Act of 2008, Section 1131 (Public Law 110-289) and the implementing regulations 24 CFR Part 91, Part 92, and Part 93, as they may be applicable to a specific fund source. The Department is authorized to administer Direct Loan Program [~~HOME~~] funds pursuant to Tex. Gov't Code[~~, §2306.111. Tex Gov't Code~~] Chapter 2306, Subchapter I, Housing Finance Division[~~: This Chapter is not applicable to the State Housing Trust Fund or Section 811~~].

(b) General. This Chapter applies to an award of MFDL funds by the Department and establishes the general requirements associated with the application and award process for such funds. Applicants pursuing MFDL assistance from the Department are required to certify, among other things, that they have familiarized themselves with all applicable rules that govern that specific program including, but not limited to this Chapter, Chapter 1 (relating to Administration), Chapter 2 (relating to Enforcement), Chapter 8 (relating to Section 811 PRA Program), and Chapter 10 of this Title (relating to Uniform Multifamily Rules). Chapter 11 of this Title (relating to Housing Tax Credit Program Qualified Allocation Plan ("QAP")) and Chapter 12 of this Title (relating to Multifamily Housing Revenue Bond Rules) will apply if MFDL funds are layered with those other Department programs. The Applicant is also required to certify that it is familiar with any other federal, state, or local financing sources that it identifies in its Application. Any conflict with rules, [~~rule of other programs or with federal~~] regulations, or statutes will be resolved on a case by case basis[~~,~~] that allows for compliance with all requirements. Conflicts that cannot be resolved may result in Application ineligibility.

(c) Waivers. Requests for waivers of any program rules or requirements must be made in accordance with §10.207 of this title (relating to Waiver of Rules for Applications) and as limited by the rules in this Chapter. In no instance will the Department consider a waiver request that would violate federal program requirements or state or federal statute.

§13.2. Definitions.

The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Tex. Gov't Code, Chapter 2306, §§141, 142, and 145 of the Internal Revenue Code, 24 CFR Part 91, Part 92, Part 93 and 2 CFR Part 200, and Chapter 10 of this Title (relating to Uniform Multifamily Rules).

(1) Annual Income or Annual Incomes --"annual income" as defined at 24 CFR §5.609, which includes but is not limited to the list of income in HUD Handbook 4350, and specifically excludes those items listed in HUD's Updated List of Federally Mandated Exclusions from Income.

(2) [~~(1)~~] Choice limiting activity--any transfer of title that occurs prior to a Development obtaining environmental clearance after an application for federal funds (HOME, NSP, and NHTF) has been submitted. Choice limiting activities [~~may~~] also include closing on loans including loans for interim financing, signing of a contract, and commencing construction. [~~All applicants for MFDL funds, regardless of whether or not the Development Site is in a Participating Jurisdiction, must include the following language in the purchase contract or site control agreement: "Notwithstanding any other provision of this Contract, Purchaser shall have no obligation to purchase the Property, and no transfer of title to the Purchaser may occur, unless and until the Department has provided Purchaser and/or Seller with a written notification that: (1) it has completed a federally required environmental review and its request for release of federal funds has been approved and, subject to any other Contingencies in this Contract, (a) the purchase may proceed, or (b) the purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property; or (2) it has determined that the purchase is exempt from federal environmental review and a request for release of funds is not required. The Department shall use its best efforts to conclude the environmental review of the property expeditiously."~~]

(3) Construction Completion--title transfer requirements and construction work have been performed as reflected by the Development's certificate(s) of occupancy and Certificate of Substantial Completion (AIA Form G704) and the final drawdown of funds has been disbursed. In addition, for Developments not layered with Housing Tax Credits, Construction Completion means all modifications requested as a result of the Department's Final Construction Inspection were cleared as evidenced by receipt of the Closed Final Development Inspection Letter.

(4) [~~(2)~~] Community Housing Development Organization (CHDO)--a private nonprofit organization that has experience developing and/or owning affordable rental housing and that meets the requirements in 24 CFR Part 92 for purposes of receiving HOME funds under the CHDO set-aside. In addition, a member of a CHDO's board cannot be a Principal of the development beyond his/her role as a board member of the CHDO or be an employee of the development team, and may not receive financial benefit other than reimbursement of expenses from the CHDO (e.g., a voting board member cannot also be a [~~the~~] paid executive [~~director of the CHDO~~)].

[~~(3) Encumbered Funds or Revenue--funding or revenue that has a state or federal program designation and must be allocated in accordance with such statute or regulation. (e.g., HOME Program income must be re-allocated as HOME funding and therefore would be encumbered as such.)~~]

(5) "Federal Affordability Period"--the period commencing on the date of Construction Completion and ending on the date which is the required number of years as defined by the federal program from the date of Construction Completion.

(6) HOME Match-Eligible Unit--a Unit in the Development that is not assisted with HOME Program funds, but would qualify as eligible for Match under 24 CFR Part 92. Unless otherwise identified by the provisions in the NOFA, TCAP-RF funds and matching contribution on NSP and NHTF Developments must be used on HOME-Match Eligible Units.

(7) Land Use Restriction ("LURA") Term--the period commencing on the effective date of the LURA and ending on the date which is the greater of the loan term or 30 years.

(8) [~~(4)~~] Matching contribution (Match)--a contribution to a [~~proposed~~] Development from non-federal [~~nonfederal~~] sources that may be in the form of one or more of the following:

(A) Cash contribution (grant), except for cash contributions made by investors in a [~~investor~~] limited partnership or other business entity subject to pass through tax benefits [~~partner~~] in a tax credit transaction or owner equity (including deferred developer fee);

(B) Reduced fees or donated labor from certain eligible contractors, subcontractors, architects, attorneys, engineers, excluding any contributions from a party related to the Developer or Owner;

(C) Net present value of yield foregone from a below market interest rate loan as described in CPD Notice 97-03;

(D) Waived or reduced fees from cities or counties not related to the Applicant in connection with the proposed Development;

(E) Donated land or land sold below market value, as evidenced by a third party appraisal, from an unrelated party.

(9) Relocation Plan--a residential anti-displacement and relocation assistance plan which (i) includes provisions consistent with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§4601-4655), implementing regulations at 49 CFR Part 24, and policy guidance in Real Estate Acquisition and Relocation Policy and Guidance (HUD Handbook 1378) and the TDHCA Relocation Handbook; and in some HOME and NSP funded developments Section 104(d) of the Housing and Community Development Act of 1974, as amended and 24 CFR Part 42 (as modified for NSP), and (ii) is in form and substance consistent with requirements of the Department.

(10) [~~(5)~~] Section 234 Condominium Housing basic mortgage limits ("234 Condo Limits")--the per-unit subsidy limits for all MFDL funding. These limits take into account whether or not a Development is elevator served and any local conditions that may make development of multifamily housing more or less expensive in a given metropolitan statistical area. Currently, the high cost percentage adjustment applicable to the 234 Condo Limits for HUD's Fort Worth Multifamily Hub is applicable for all Developments that TDHCA finances through the MFDL Program.

(11) State Affordability Period--the LURA Term as described in the MFDL contract and loan documents and as required by Department in accordance with the State Act which is usually an additional period after the Federal Affordability Period.

§13.3. General Loan Requirements.

(a) Direct Loan funds may be made available through a Notice of Funding Availability ("NOFA") or other similar governing document that includes the basic Application and funding requirements. [~~MFDL funds may be used to directly assist distressed developments previously funded by the Department when approved by specific action of the Department's Governing Board ("Board").~~]

(b) Direct loan funds may not be awarded if an underwriting report that has been issued by the Department Real Estate Analysis Division has become final and concludes that the Development does not need the MDFL funding for which it has applied because it is over sourced.

(c) [~~(b)~~] Direct Loan funds are composed of annual HOME and National Housing Trust Fund allocations from HUD, repayment of TCAP loans, HOME Program Income, NSP Program Income, and any other similarly encumbered funding that may become available by Board action, except as otherwise noted in this Chapter. Similar funds include any funds that are required to be to be loaned or granted for the development of multifamily property and are not governed by another Chapter in this Title.

(d) [~~(c)~~] Direct Loan funds may be used for the acquisition, new construction, reconstruction, or rehabilitation of affordable housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, or operating cost reserves, all subject to HUD guidance. Other expenses, such as financing costs, relocation expenses of any displaced persons, families, businesses, or organizations may be included. MFDL funds may be used to assist directly distressed developments previously funded by the Department when approved by specific action of the Department's Governing Board ("Board").

(e) [~~(d)~~] While all costs associated with the Development and known by the sponsor must be disclosed as part of the Application, costs ineligible for reimbursement with Direct Loan funds in accordance with 24 CFR Part 91, Part 92, Part 93, and 2 CFR Part 200, as federally required or identified in the NOFA include but are not limited to:

(1) Offsite costs;

(2) Stored Materials;

(3) Site Amenities;

(4) Detached Community Buildings;

(5) Carports and/or garages;

(6) Parking garages;

(7) Swimming pools;

(8) [~~(7)~~] Commercial Space costs;

(9) [~~(8)~~] Reserve accounts not related to NHTF;

(10) [~~(9)~~] TDHCA fees;

(11) Syndication and organizational costs;

(12) [~~(10)~~] Delinquent fees, taxes, or charges;

(13) [~~(11)~~] Costs incurred more than 24 months prior to the effective date of the Direct Loan Contract unless the Application is awarded TCAP Loan Repayment funds;

(14) Costs that have been allocated to or paid by another fund source;

(15) Deferred Developer fee; and,

(16) [~~(12)~~] Other costs limited by Award or NOFA, or as established by the Board.

§13.4. Set-asides, Regional Allocation, and Priorities.

(a) Set-asides: Specific types of Applications or Developments for which a portion of MFDL funds may be reserved in a NOFA will be grouped in set-asides. The Supportive Housing/Soft Repayment set-aside, CHDO set-aside, and General set-aside, as described below, are fixed set-asides that will be included in the annual NOFA. The remaining set-asides described below are flexible set-asides and

are applicable only when identified in the NOFA. The amount of a single award may be credited to multiple set-asides, in which case the depleted portion of funds may be repositioned into an oversubscribed set-aside prior to a defined collapse deadline. Applications under any and all set-asides may or may not be layered with other Department Multifamily programs except as provided in this section or as determined by the Board to address unique circumstances not addressed by these rules.

(1) Fixed Set-Asides:

(A) Supportive Housing/Soft Repayment Set-Aside. The Supportive Housing/Soft Repayment ("SH/SR") Set-aside will be limited by the unencumbered interest revenue generated by multifamily loan payments and any amount under the NHTF allocation received by the Department and not otherwise programmed. Supportive Housing and Soft Repayment may be two independent set-asides in the NOFA, in order to accommodate fund source requirements. The SH/SR set-aside is reserved for developments that are not able to support amortizing debt due to higher costs for supportive services and/or [~~or~~] extremely low income and rent restrictions. Soft repayment loans may be provided with deferred payable, deferred forgivable or cash flow terms. Applicants seeking to qualify under this set-aside must propose Developments that meet either:

(i) the Supportive Housing requirements in 10 TAC §10.3(a) in the Uniform Multifamily Rules including the other underwriting consideration for Supportive Housing Developments 10 TAC §10.302(g)(3) of the Underwriting and Loan Policy; or

(ii) the requirements in subclauses (I) - (III), funding exclusively units targeting 30% Area Median Income (AMI) households;

(I) All units assisted with MFDL funds must be available for and have rents no higher than households earning 30% AMI or less.[~~;~~]

~~*(II)* Any units assisted with MFDL funds may not also be receiving project-based rental assistance, other than MFDL funds.~~]

(II) [~~(III)~~] Any units assisted with MFDL funds may not also be receiving tenant-based voucher or rental assistance to the extent that there are other available units within the Development that the voucher-holder may occupy; and[~~.~~]

(III) Units assisted with MFDL may not be restricted to 30% AMI by another Department program or any other fund source.

(B) CHDO Set-aside. Unless waived by HUD, a portion of the Department's annual HOME allocation, equal to at least 15%, will be set aside for eligible Community Housing Development Organizations ("CHDO") meeting the requirements of the definition of Community Housing Development Organization found in 24 CFR §92.2 and §13.2(a). Applicants under the CHDO Set-Aside must be proposing to develop housing in Development Sites located outside Participating Jurisdictions unless the award is made within a Persons with Disabilities ("PWD") set-aside or unless the requirement under Tex. Gov't Code §2306.111(c)(1) has been waived by the Governor as the result of a disaster declaration. CHDO funds are typically available as fully-repayable amortizing debt consistent with §13.4 of this Chapter relating to debt structure policy. In instances where an application submitted under the CHDO Set-Aside also qualifies under the SH/SR Set-Aside, CHDO funds may be structured in accordance with the SH/SR Set-Aside requirements. A CHDO operating expenses grant may be awarded in conjunction with an award of MFDL funds under the CHDO set-aside in accordance with 24 CFR §92.208. Applications under the CHDO set-aside may not have a for profit special limited partner within the ownership organization chart.

(C) General. The General set-aside is for all other applications that do not meet the requirements of the SH/SR, [~~or~~] CHDO set-asides, or flexible set-asides, if any. A portion of the General set-aside may be repositioned into the CHDO set-aside in order to fully fund a CHDO award that meets or exceeds the set-aside amount.

(2) Flexible Set-Asides:

(A) 4% and Bond Layered. The 4% and Bond Layered set-aside is reserved for Applications meeting all MFDL requirements that are layered with 4% Housing Tax Credits and Private Bond funds that do not meet the definition of CHDO.

(B) Persons with Disabilities ("PWD"). The PWD set-aside is reserved for Developments restricting units for tenants who meet the requirements of Tex. Gov't Code §2306.111(c)(2). MFDL funds will be awarded in a NOFA for the PWD set-aside only to the extent sufficient funds are available to award to at least one Application within a Participating Jurisdiction under Tex. Gov't Code §2306.111(c)(1).

(C) 9% Layered. The 9% Layered set-aside is reserved for applications meeting all MFDL requirements that are layered with 9% Housing Tax Credits, and do not meet the definition of CHDO. Awards under this set-aside are dependent on the concurrent award of a 9% HTC allocation.

(D) Additional set-asides may be developed, subject to Board approval, to meet the requirements of specific funds sources, or to address Department priorities.

(b) Regional Allocation. All funds in the annual NOFA will be initially allocated to regions and potentially subregions based on a Regional Allocation Formula ("RAF") within the set-asides. The RAF methodology may differ by fund source. HOME funds will be allocated in accordance with Tex. Gov't Code Chapter 2306. The end date for the RAF will be identified in the NOFA, but in no instance shall it be less than 30 days from the date a link to the NOFA is published in the *Texas Register*.

(1) After expiration of the RAF, funds collapse but may still be available within set-asides as identified in the NOFA [~~but for an additional period not less than 15 days~~]. All Applications received prior to these first two collapse period deadlines will continue to hold their priority unless they are withdrawn, terminated, or funded.

(2) Funds remaining after expiration of the RAF [~~set-asides~~], which have not been requested in the form of a complete application, will be available statewide on a first-come first-served basis to Applications submitted after the collapse dates.

(3) In instances where the RAF would result in regional or subregional allocations insufficient to fund an application, the Department may use an alternative method of distribution, including an early collapse, revised formula or other methods as approved by the Board.

(c) Priorities for the Annual NOFA. Complete Applications received during the period of the RAF will be prioritized for review and recommendation to the Board, to the extent that funds are available both in the region and in the set-aside under which the application is received. If insufficient funds are available in a region to fund all Applications then the oversubscribed Applications will be evaluated only after the RAF and/or set-aside collapse and in accordance with the additional priority levels below, unless an Application received earlier is withdrawn or terminated. If insufficient funds are available within [~~with~~] a region or set-aside, the Applicant may request to be considered under another set-aside if they qualify, prior to the collapse. Applica-

tions will be reviewed and recommended to the Board to the extent funds are available in accordance with the order of prioritization described in paragraphs (1) - (3) of this subsection.

(1) Priority 1: Applications not layered with 2018 [~~2017~~] 9% HTC that are received prior to the 2018 [~~2017~~] 9% HTC Application deadline as described in 10 TAC §11.2 Program Calendar for Competitive Housing Tax Credits. Priority 1 applications will be prioritized based on score [~~on a first come first served basis~~] within their respective set-aside and subregion or region. If the RAF has collapsed, Applications will be reviewed on a first-come first served basis within their set-aside.

(2) Priority 2: Applications layered with 2018 [~~2017~~] 9% HTC will be prioritized based on their recommendation status and score for an HTC allocation. All Priority 2 applications will be deemed received on the Market Analysis Delivery Date as described in 10 TAC §11.2 Program Calendar. In order for an MFDL application layered with 2018 [~~2017~~] 9% HTC to be considered complete, Applications for both programs must be timely received. Priority 2 applications will be recommended for approval at the same meeting when the Board approves the 2018 [~~2017~~] 9% HTC allocations. Applications that are on the wait list [~~will be recommended~~] for a 2018 [~~2017~~] 9% HTC allocation are not guaranteed the availability of [~~and are tied for~~] MFDL funds [~~under the scoring criteria will be further prioritized for funding based upon the scoring, tiebreaker and award criteria in 10 TAC Chapter 11 (the "QAP")~~].

(3) Priority 3: Applications that are received after the 2018 [~~2017~~] 9% HTC Application deadline are on a first come first served basis for any remaining funds until the final deadline identified in the annual NOFA.

(d) Other Priorities. The Board may set additional priorities for the annual NOFA, and for one time or special purpose NOFAs.

§13.5. Award Process.

(a) Notice of Funding Availability ("NOFA"). All MFDL funds from the annual allocation will be distributed through a NOFA that provides the specific collapse dates and deadlines as well as set-aside and RAF amounts applicable to the MFDL program, along with Application information. Other funds may be distributed by NOFA or through other methods [~~method~~] approved by the Board. Set-aside, RAF, and total funding amounts may increase or decrease in accordance with the provisions herein without further Board action as long as the NOFA itself did not require Board action.

(b) Date of Receipt. Applications will be considered received on the business day of receipt. If an application is received after 5pm Austin Local Time, it will be determined to have been received on the following business day. Applications received on a non-business day will be considered received on the next day the Department is open. Applications will be considered complete at the time all required third party reports and application fee(s), in addition to the application, are received by the Department. Within certain set-asides, the date of receipt may be fixed, regardless of the earlier actual date a complete application is received. If multiple applications are received on the same date, in the same region, and within the same set-aside, then score and tiebreaker factors, as described in §13.6 for MFDL or 10 TAC §11.9 for Applications layered with 9% HTC, will be used to determine [~~as~~] the Application's rank [~~determining factor affecting the ranking of the application~~].

(c) Applications. MFDL Applicants must follow the applicable requirements in 10 TAC Chapter 10, Subchapter C, Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications. Failure to timely respond to any notice of Administrative Deficiency will result in a reestablishment of the date of receipt of the Application to the final date at which the cure to the notice was received by the Department. If the date of receipt of the Application is reestablished, an Application could be de-prioritized in favor of another application received prior to the new application submission date.

(1) All applicants for MFDL funds, regardless of whether or not the Development Site is in a Participating Jurisdiction, must include the following language in the purchase contract or site control agreement: "Notwithstanding any other provision of this Contract, Purchaser shall have no obligation to purchase the Property, and no transfer of title to the Purchaser may occur, unless and until the Department has provided Purchaser and/or Seller with a written notification that:

(A) it has completed a federally required environmental review and its request for release of federal funds has been approved and, subject to any other Contingencies in this Contract,

(i) the purchase may proceed, or

(ii) the purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property; or

(B) it has determined that the purchase is exempt from federal environmental review and a request for release of funds is not required. The Department shall use its best efforts to conclude the environmental review of the property expeditiously."

(2) Applications also requesting 9% HTC may have the ability to revise financing prior to award should MFDL funds be oversubscribed in a set-aside. The Department will provide notice to all impacted Applicants in the case of over-subscription.

(d) Eligibility Criteria. The Department will evaluate the Application for eligibility and threshold at the time of full Application pursuant to the requirements of this Chapter and Chapter 10 of this title (relating to Uniform Multifamily Rules). If there are changes to the Application at any point prior to MFDL loan closing that have an adverse effect on the score and ranking order and that would have resulted in the application being ranked below another application in the ranking, the Department may terminate the Application.

(1) Applicants requesting MFDL as the only source of Department funds may meet the Experience Requirement under §10.204(6) of this Chapter or by providing evidence of the successful development, and operation for at least 5 years, of at least twice as many affordability restricted units as requested in the Application.

(2) Applications for Developments previously given awards from the [~~awarded~~] Department [~~ funds under any program~~], or where construction has already started or been completed, regardless of fund source and are not proposing acquisition and rehabilitation, [~~except distressed Developments under §13.3(a),~~] must be found eligible by the Board. The Board may find other applicants eligible for good cause such as Developments assisted by the Department that have encountered adverse factors beyond their control that could materially impair their ability to provide the affordable housing. An application that requires a finding of eligibility by the Board must identify that fact in their application so that the staff may present the matter to the Board for an eligibility determination. A finding of eligibility under this section does not guarantee an award. In general, these applications will not be funded with HOME or NHTF funds.

(A) Requests for eligibility determinations under this paragraph must be received with the Application, so that staff may present the matter to the Board for an eligibility determination, and will not be considered more than 30 calendar days prior to the first Application acceptance date published in the NOFA.

(B) Criteria for the Board to consider would include clauses (i) - (iii) of this subparagraph:

(i) evidence of circumstances beyond the Applicant's control which could not have been prevented by timely start of construction; or

(ii) Force Majeure events; and

(iii) evidence that no further exceptional conditions exist that will delay or cause further cost increases.

(C) For applications for Developments previously given awards from the Department that have not yet achieved Construction Completion, Department funds will be evaluated at no more than the amount of Developer Fee proposed in the original Application. MFDL funds may not be used to fund increased Developer Fee, regardless of the allowability of the increase under other Department rules.

§13.6. Scoring Criteria.

The criteria identified in paragraphs (1) - (7) [~~(6)~~] of this section will be used in the evaluation and ranking of applications to the extent that other applications were received on the same date and within the same set-aside and prioritization. There is no rounding of numbers in this section, unless rounding is explicitly indicated for that particular calculation or criteria. The scoring items used to calculate the score for a 9% HTC layered application will be utilized for scoring for an MFDL Application, and evaluated in the same manner except as specified below. Scoring criteria in Chapter 11 of this title will always be superior to Scoring Criteria in this Chapter to the extent that an MFDL Application is also concurrently requesting 9% housing tax credits [~~All scoring items derived from the QAP will have the same value for MFDL scoring~~]:

(1) Applicants eligible for points under 10 TAC §11.9(c)(4) related to the Opportunity Index (7 points).

(2) Tenant Services. Applicants eligible for points under 10 TAC §11.9(c)(3)(A) related to Tenant Services (9 points) Applicants eligible for points under 10 TAC §11.9(c)(3)(B) related to Tenant Services (1 point).

(3) Underserved Area. Applicants eligible for points under 10 TAC §11.9(c)(6) related to Underserved Area (up to 5 points).

(4) Subsidy per Unit. An application that caps the per unit subsidy limit (inclusive of match) for all Direct Loan units regardless of unit size at:

(A) $100,000 per MFDL unit (4 points).

(B) $80,000 per MFDL unit (8 points).

(C) $60,000 per MFDL unit (10 points).

(5) Rent Levels of Tenants. An Application may qualify to receive up to thirteen (13) points for placing the following rent and income restrictions on the proposed Development for the entire Affordability Period. These Units may not be restricted to 30 percent or less of AMGI by another fund source.

(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI (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 (12 points); or

(C) At least 5 percent of all low-income Units at 30 percent or less of AMGI (7 points).

(6) Tenant Populations with Special Housing Needs. An Application may qualify to receive two (2) points by serving Tenants with Special Housing Needs. Points will be awarded as described in subparagraphs (A) - (B) of this paragraph. If pursuing these points, Applicants must try to score first with subparagraph (A) and then subparagraph (B), both of which pertain to the requirements of the Section 811 Project Rental Assistance Program ("Section 811 PRA Program") (10 TAC Chapter 8).

(A) An Applicant or Affiliate that Owns or Controls an Existing Development that is eligible to participate in the Department's Section 811 Project Rental Assistance Program ("Section 811 PRA Program") will do so in order to receive two (2) points. In order to qualify for points, the Existing Development must commit to the Section 811 PRA Program at minimum 10 Section 811 PRA Program Units, unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Program Rental Assistance Rule ("811 Rule"), 10 TAC Chapter 8, limits the Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one Application. The Applicant or Affiliate will comply with the requirements of 10 TAC Chapter 8.

(B) An Applicant or Affiliate that does not meet the Existing Development requirements of 10 TAC Chapter 8 but still meets the requirements of 10 TAC §8.3 is eligible to receive two (2) points by committing Units in the proposed Development to participate in the Department's Section 811 PRA Program. In order to be eligible for points, Applicants must commit at least 10 Section 811 PRA Program Units in the proposed Development for participation in the Section 811 PRA Program unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Program Rental Assistance Rule ("811 Rule"), 10 TAC Chapter 8, limits the Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one HTC Application. The Applicant will comply with the requirements of 10 TAC Chapter 8.

(7) Tiebreaker. In the event that two or more Applications receives the same number of points based on the scoring criteria above, staff will recommend for award the Application that proposes the greatest percentage of 30% AMGI MFDL units within the Development that would convert to households at 15% AMGI in the event of a tie in the Tiebreaker Certification.

[~~(6) Tiebreaker. In the event that one or more applications receives the same number of points based on the scoring criteria above, staff will recommend for award the Application that proposes the greatest percentage of 30% AMGI MFDL units within the Development that would convert to households at 15% AMGI in the event of a tie in the Tiebreaker Certification.~~]

§13.7. Maximum Funding Requests.

(a) The maximum funding request for all applications will be identified in the NOFA, and may vary by development type, [~~and/or~~] set-aside, or fund source.

(b) Maximum Per-Unit Subsidy Limits. The 234 Condo limits with the applicable high cost percentage adjustment in effect at the time of application are the maximum per-unit subsidy limits (inclusive of Match) that an applicant may use to determine the amount of MFDL funds or other federal funds that may subsidize a unit. Stricter per-unit subsidy limits are allowable and incentivized as point scoring items in §13.6 Scoring Criteria. Per-unit subsidy limits as well as cost allocation [~~subsidy layering~~] analysis - ensuring that the amount of MFDL units as a percentage of total units is greater than the percentage of MFDL funds requested as a percentage of total development costs - will determine the amount of MFDL units required.

§13.8. Loan Structure and Underwriting Requirements.

(a) Except for awards made under the SR/SH set-aside, all Multifamily Direct Loans awarded will be underwritten as fully repayable (must pay) at not less than the Discount window primary credit rate published by the Federal Reserve (https://www.federalreserve.gov/releases/h15/) [(https://www.federalreserve.gov/releases/h15/#fn2)] on the date of initial publication of the NOFA, plus 200 basis points and a 30 year amortization with a term that matches the term of any superior loans (within 6 months) at the time of application. If the Department determines that the Development does not support this structure, the Department may recommend an alternative that makes the development feasible under all applicable sections of 10 TAC §10.300 related to Underwriting Policy, and §13.8(c). The interest rate, amortization period, and term for the loan will be fixed by the Board at Award and can only be amended prior to closing by the process in §13.12 of this chapter.

(b) Changes [Any material changes] to the total development cost and/or other sources of funds from the publication of the initial Underwriting Report to the time of loan closing must be reevaluated by Real Estate Analysis staff who [and] may recommend [cause] changes to principal amount and/or repayment structure for the Multifamily Direct Loan [such] that will allow the Department [is able] to mitigate any increased risk. Where the Department determines such risk is not adequately mitigated, the award may be terminated or reconsidered [as amended] by the Board. Increases in the principal or payment amount of any superior loans after the initial Underwriting Report must be approved by the Board.

(c) Direct Loans through the Department must adhere to the following criteria as identified in paragraphs (1) - (7) [(6)] of this subsection if being requested as construction-to-permanent loans:

(1) The term for permanent loans shall be no less than ten (10) [fifteen (15)] years and no greater than forty (40) years and the amortization schedule shall be thirty (30) years. The Department's loan must mature at the same time or within six (6) months of the shortest term of any senior debt so long as neither exceeds forty (40) years and six (6) months.

(2) Amortized loans shall be structured with a regular monthly payment beginning on the first day of the 25th full month following the actual date of loan closing and continuing for the loan term. If the first lien mortgage is a federally insured HUD or FHA mortgage or if a surplus cash flow structure is required for a loan from the SH/SR set-aside, the Department may approve a loan structure with annual payments payable from surplus cash flow provided that the debt coverage ratio, inclusive of the loan, continues to meet the requirements in this subchapter.

(3) If the proposed first lien is a federally insured HUD or FHA mortgage that requires the Direct Loan to be subject to 75% of surplus cash flow, staff will require the debt service coverage ratio on both the federally insured loan and the Department's loan - as restricted to 75% of surplus cash flow - to continue to meet the minimum 1.15 in accordance with 10 TAC §10.302(d)(4)(D).

(4) [(3)] Loans shall be secured with a deed of trust with a permanent lien position that is superior to any other sources for financing including hard repayment debt that is less than or equal to the Direct Loan amount and superior to any other sources that have soft repayment structures, non-amortizing balloon notes, have deferred forgivable provisions or in which the lender has an identity of interest with any member of the Development Team; and,

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

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

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

(6) [(5)] If the Direct Loan is the only source of Department funding for the Development:[,]

(A) The [the] Development Owner must provide equity in an amount not less than 20 percent of Total Housing Development Costs. [and must provide]

(B) For Applicants proposing new construction, an "as completed" appraisal pursuant to 10 TAC §10.304 which results in total repayable loan to value of not greater than 80% must be provided.

(C) For Applicants proposing rehabilitation, the "as is" appraisal required by 10 TAC §10.205(4) may meet this requirement without needing an "as completed" appraisal provided the loan to value is not greater than 80%.

(7) [(6)] All Direct Loan applicants where other third-party financing entities are part of the sources of funding must submit a *pro-forma* and lender approval letter evidencing review of the Development and the Principals in accordance with 10 TAC §11.9(e)(1). Where no third-party financing exists, the Department reserves the right to procure a third-party evaluation which will be required to be prepaid by the applicant.

(d) Direct Loans through the Department must adhere to the following criteria as identified in paragraphs (1) - (3) of this subsection if being requested as construction only loans:

(1) The term of the construction loan must be coterminous with any superior construction loan. In the event that the Direct Loan is the only construction loan, the term may not exceed 24 months;

(2) The minimum interest rate will be 2%; and

(3) Up to 75% of the construction loan may be advanced at loan closing should there be sufficient costs to reimburse that amount.

§13.9. Construction Standards.

All Developments financed with Direct Loans will be required to meet at a minimum all applicable state and local codes, ordinances, and standards; the 2012 International Existing Building Code ("IEBC") or International Building Code ("IBC") as applicable. Rehabilitation Developments must meet the requirements in paragraphs (1) - (6) [(5)] of this section.

(1) recommendations made in the Environmental Assessment and any Physical Conditions Assessment with respect to health and safety issues, life expectancy of major systems (structural support; roofing; cladding and weatherproofing; plumbing; electrical; and heating, ventilation, and air conditioning) must be implemented;

(2) for properties originally constructed prior to 1978, the Physical Conditions Assessment and rehabilitation scope of work must be provided to the party conducting the lead-based paint and/or asbestos testing, and the rehabilitation must implement the mitigation recommendations of the testing report;

(3) all accessibility requirements pursuant to 10 TAC Subchapter B must be met;

(4) the broadband infrastructure requirements described in 24 CFR §92.251(a)(2)(vi) or (b)(1)(x) or 24 CFR §93.301(a)(2)(vi) or 24 CFR 93.301(b)(2)(vi) as applicable;

(5) [~~(4)~~] 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

(6) [~~(5)~~] should IEBC be more restrictive than local codes, or should local codes not exist, then the Development must meet the requirements imposed by IEBC.

§13.10. Development and Unit Requirements.

(a) The bedroom/bathroom/amenities and square footages for Direct Loan Units must be comparable to the bedroom/bathroom/amenities and square footages for the total number of Units in the Development based on the amount of Direct Loan funds requested, inclusive of Match, as a percentage of total Direct Loan eligible costs. As a result of this requirement, the Department will always use the Proration Method as the Cost Allocation Method in accordance with CPD Notice 16-15 except as described in (b) of this section. Additionally, the amount of Direct Loan funds requested inclusive of Match cannot exceed the per-unit subsidy limit. For example, in a 20 Unit Development composed of 6 1-bedroom, 10 2-bedroom, and 4 3-bedroom units, where the amount of Direct Loan funds requested is $1,000,000, [~~the Match being provided is $100,000,~~] and the total Direct Loan-eligible project costs are $4,000,000 [~~$4,400,000~~], 25 percent of each unit type must be a Direct Loan Unit ($1,000,000 [~~$1,100,000~~] Direct divided by $4,000,000 [~~$4,400,000~~]). In the example below, the square footages are the same for each unit that has the same number of bedrooms and all fractional units are rounded up to require the next whole number of MFDL Units. In this example, even though the amount of Direct Loan funds (inclusive of Match) as a percentage of total Direct Loan-eligible costs (25 percent) would result in a minimum 5 units if the percentage was applied on a total unit basis, the 25 percent must be applied to each unit type with partial Units rounded up to the next whole number, resulting in 2 additional units for a total of 7 Direct Loan Units. Please see CPD Notice 16-15 for further guidance.

Figure: 10 TAC §13.10(a) (No change.)

(b) For HOME, NSP, and TCAP RF, [~~All~~] Direct Loan Units must float throughout the Development unless the Development also contains public housing units that will receive Operating Fund or Capital Fund assistance under Section 9 of the 1937 Act as defined in 24 CFR §5.100. For NHTF, Direct Loan Units must float throughout the Development except as prohibited by 24 CFR §93.203. Floating Direct Loan units may only float among the Units as described in the Direct Loan Contract and Direct Loan Land Use Restriction Agreement ("LURA"), or as specifically approved in writing by the Department.

(c) The minimum affordability period for all Direct Loan Units awarded under a NOFA will match the greater of the term of the loan or 30 years unless a lesser period is approved by the Board and when assisting distressed developments.

(d) If the Department is the only source of funding for the Development, all Units must be restricted.

§13.11. Post-Award Requirements.

(a) Direct Loan awardees must execute an Award Letter and Loan Term Sheet provided by the Department within thirty (30) calendar days after receipt of the letter. The Award Letter and Loan Term Sheet will be conditional in nature and provide a basic outline of the terms and conditions approved by the Board [~~currently being contemplated for the Development~~].

(b) If a Direct Loan award is returned after Board approval, or if the Applicant or Affiliates fail to meet federal commitment or expenditure requirements, penalties may apply under 10 TAC §11.9(f) and/or [~~§ 11.9(f) or~~] the Department may prohibit the Applicant and all Affiliates from applying for MFDL funds for a period of 2 years if they have returned their funds or have failed to take necessary action specified in one or more agreement with the Department where the failure resulted in the Department's failure to meet federal commitment and expenditure requirements.

(c) Direct Loan awardees must obtain environmental clearance (if applicable) and meet all requirements for commitment of funds within 180 days after award. Direct Loan awardees that commit any choice limiting activities prior to obtaining environmental clearance may lead to termination of the Direct Loan award.

(d) Direct Loan awardees must execute a Contract within six (6) [~~nine (9)~~] months of the Board approval date.

(e) Loan closing must occur and construction must begin no later than three (3) [~~six (6)~~] months from the effective date of a Contract.

(f) The Development Owner is required to submit quarterly construction status reports to the Asset Management Division as described and by the deadlines specified in §10.402(h).

(g) [~~(f)~~] In addition to any other requirements as the result of any other Department funding sources, the Development Owner must submit a mid-construction development inspection request once the development has met [~~or exceeded~~] 25% construction completion as indicated on the G703 Continuation Sheet. Inspection staff will issue a mid-construction development inspection letter that confirms that work is being done in accordance with the applicable codes, the construction contract, and construction documents. Up to 50 percent of the Direct Loan award will be released prior to issuance of the mid-construction development inspection letter.

(h) [~~(g)~~] Construction must be completed, as reflected by the development's certificate(s) of occupancy and Certificate of Substantial Completion (AIA Form G704), and a final development inspection request must be submitted to the Department within 18 months of the actual loan closing date, with the repayment period beginning on the first day of the 25th month following the actual date of loan closing. The final development inspection letter will verify committed amenities have been provided and confirm compliance with all applicable accessibility requirements

(i) [~~(h)~~] Receipt of a Closed Final Development Inspection Letter, indicating that all deficiencies identified in the Final Inspection Letter have been corrected, must occur within 24 months of the actual date of loan closing. The Final Development Inspection may be conducted concurrently with a Uniform Physical Condition Standards ("UPCS") inspection. However, any letters associated with a UPCS inspection will not satisfy the Closed Final Development Inspection Letter requirement.

(j) [~~(i)~~] Extensions to any of the above benchmarks may only be made for good cause and approved by the Department if construction is timely started;

(k) [~~(j)~~] Initial occupancy of all MFDL assisted Units by eligible tenants shall occur within six (6) months of the final Direct Loan draw. Requests to extend the initial occupancy period must be accompanied by documentation of marketing efforts and a marketing plan. The marketing plan may be submitted to HUD for final approval, if required for the MFDL fund source;

(l) [~~(k)~~] Repayment will be required on a per Unit basis for Units that have not been rented to eligible households within eighteen (18) months of the final Direct Loan draw.

(m) [~~(l)~~] Termination of the Direct Loan award and repayment of all disbursed funds will be required for any Development that is not completed within four (4) years of the effective date of a Direct Loan Contract.

(n) [~~(m)~~] Closing Deadline: Awards will be made subject to [~~hard~~] closing deadlines established at the time of award by the Board subject to the conditions in §13.8(a), which may only be extended in accordance with §13.12 [~~by additional Board action~~] on the basis of delays caused by circumstances outside the control of the applicant or constraints in arranging a multiple source closing. An extension will not be available if an Applicant has:

(1) failed to timely begin or complete processes required to close; including

(A) finalizing all equity and debt financing; or

(B) the environmental review process; or

(2) made changes to the Development that require additional underwriting by the Department without sufficient time to complete the review.

(o) [~~(n)~~] Loan Closing: In preparation for closing any Direct Loan, the Development Owner must submit the items described in paragraphs (1) - (7) of this subsection:

(1) Documentation of the prior closing or concurrent closing with all sources of funds necessary for the long-term financial feasibility of the Development.

(2) Due diligence determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department.

(3) Where the Department will have a first lien position and the Applicant provides personal guarantees from all principals as well as [~~and~~] documentation that closing on other sources is reasonably expected to occur within three (3) months, the Executive Director or authorized designee may approve a closing to move forward without the closing on other sources. The Executive Director as the authorized designee of the Department must require a personal guarantee, in form and substance acceptable to the Department, from a Principal of the Development Owner for the interim period;

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

(5) Documentation required for closing includes, but is not limited to:

(A) Draft Owner/General Contractor agreement and draft Owner/Architect agreement prior to closing with final executed copies required by the day of closing;

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

(C) plans and specifications for review by the Department's inspection staff. Inspection staff will issue a plan review letter that is intended to [~~will~~] assist in identifying early concerns associated with [~~preparation for~~] the Department's [~~development's~~] final construction requirements [~~inspection~~];

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

(E) final Development information, including but not limited to a final development cost schedule, sources and uses, operating *proforma*, annual operating expenses, cost categories for the Direct Loan funds, updated written financial commitments or term sheets and any additional financing exhibits that have changed since the time of application;

[~~(F) If the changes to the budget or sources of funds reflect material changes to the transaction approved by the Board, documentation to ensure that the Development continues to meet the requirements of this chapter must be provided and material changes to the application must be approved by the Board. Material changes include but are not limited to any increase in debt payment for superior lien loans and a greater than a 10 percent change in any of the following:~~]

~~*[(i)* Total Housing Development Costs;]~~

~~*[(ii)* deferred developer fee amount;]~~

~~*[(iii)* superior loan amount(s);]~~

(6) if required by the fund source, prior to Contract Execution, unless an earlier period is described in Chapter 10 of this title, the Development Owner must provide verification of:

(A) environmental clearance;

(B) Site and Neighborhood clearance;

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

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

(7) The Direct Loan Contract as executed, which will be drafted by counsel for the Department. No changes proposed by the Developer or Developer's counsel will be accepted unless approved by the Department's Legal Division.

(p) [~~(o)~~] Loan Documents. The Development Owner is required to execute all loan closing documents required by and in form and substance acceptable to the Department's Legal Division

(1) Loan closing documents include but are not limited to a promissory note, deed of trust, construction loan agreement (if the proceeds of the loan are to be used for construction), LURA, Architect and/or licensed engineer certification of understanding to complete environmental mitigation if such mitigation is identified in HUD's environmental clearance or the Real Estate Analysis Division (REA) and assignment and security instruments whereby the Developer, the Development Owner, and/or any Affiliates (if applicable) grants the Department their respective right, title, and interest in and to other collateral, including without limitation the Owner/Architect agreement and the Owner/General Contractor agreement, to secure the payment and performance of the Development Owner's obligations under the loan documents. In the event the Development receives funding that requires the Department's funding to be in a subordinate position, the individual who is able to control the Development (all such individu-

als if more than one possesses such power jointly and severally) will execute a personal guaranty in favor or the Department that in the event that the Development fails to fulfill its requirements of affordability for the required period, and as a result the Department is required to repay funds to the U.S. Department of Housing and Urban Development using non-federal funds and the net proceeds available to the Department after a foreclosure, deed in lieu of foreclosure, or similar disposition of the Development are insufficient to make such repayment, the guarantor(s) will jointly and severally guarantee repayment of that amount.

(2) Repayment provisions will require repayment on a per unit basis for units that have not been rented to eligible households within eighteen (18) months of the final Direct Loan draw; termination and repayment of the Direct Loan award in full will be required for any Development that is not completed within four (4) years of the date of Direct Loan Contract execution.

(3) Loan terms and conditions may vary based on the type of Development, Real Estate Analysis underwriting report, and the set-aside under which the award was made.

(q) [~~(p)~~] Disbursement of Funds. The Borrower must comply with the requirements in paragraphs (1) - (11) [~~(9)~~] of this subsection in order to receive a disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Borrower's compliance with these requirements may be required with a request for disbursement:

(1) All requests for disbursement must be submitted through the Department's Housing Contract System, using the MFDL draw workbook or such other format as the Department may require.

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

(3) Disbursement requests must include a down-date endorsement to the Direct Loan (mortgagee) title policy or Nothing Further Certificate that includes a title search through the date of the Architect's signature on AIA form G702. For release of retainage the down-date endorsement to the Direct Loan title policy or Nothing Further Certificate must be dated at least thirty (30) calendar days after the date of the construction completion as certified on the Certificate of Substantial Completion (AIA Form G704) with $0 as the work remaining to be completed. Disbursement requests for acquisition and closing costs, or requests for soft costs only, are exempt from this requirement;

(4) [~~(3)~~] At least 50 percent of the funds will be withheld from the initial disbursement of loan funds to allow for periodic disbursements;

(5) [~~(4)~~] The initial draw request for the development must be entered into the Department's Housing Contract System no later than ten business days prior to the one year anniversary of the effective date of the Direct Loan Contract;

(6) [~~(5)~~] Up to 75 percent of Direct Loan funds may be drawn before providing evidence of Match. Thereafter, the Borrower must provide evidence of Match being credited to the Development prior to release of the final 25 percent of funds;

(7) [~~(6)~~] Developer fee disbursement shall be limited by paragraph (10) of this subsection and further conditioned upon:

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

(B) for Developments in which the loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits, developer fees will not be reimbursed by the Department except as follows. If all other lenders and syndicator in a Housing Tax Credit development (if applicable) provide written confirmation that they do not have an existing or planned agreement to govern the disbursement of developer fees and expect that Department funds shall be used to fund developer fees developer fees shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

(C) the Department may reasonably withhold any disbursement in accordance with the Loan Documents and if it is determined that the Development is not progressing as reasonably necessary to meet the benchmarks for the timely completion of construction of the Development as set forth in the loan documents, or that cost overruns have put the Development Owner's ability to repay its Direct Loan or complete the construction at risk in accordance with the terms of the loan documents and within budget. If disbursement has been withheld under this subsection, the Development Owner must provide evidence to the satisfaction of the Department that the Development will be timely completed and occupied in order to continue receiving funds. If Disbursement is withheld for any reason, disbursement of any remaining developer fee will be made only after construction of the Development has been completed, and all requirements for expenditure and occupancy have been met;

(8) [~~(7)~~] expenditures must be allowable and reasonable in accordance with federal and state rules and regulations. The Department shall review [~~determine the reasonableness of~~] each expenditure requested for reasonableness. The Department may request the Development Owner make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of Department funds to Development Owner as may be necessary or advisable for compliance with all program requirements;

(9) [~~(8)~~] table funding requests will not be considered unless the Direct Loan Contract has been executed and all necessary documentation has been completed and submitted to the Department at least ten (10) calendar days prior to planned [~~anticipated~~] closing;

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

(A) Certificate of Substantial Completion (AIA Form G704) with $0 as the cost estimate of work that is incomplete;

(B) A down date endorsement to the Direct Loan title policy or Nothing Further Certificate dated at least 30 calendar days after the date of completion as certified on the Certificate of Substantial Completion (AIA Form G704);

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

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

(E) Receipt of Certificates of Occupancy;

(F) Development completion reports, which include, [~~includes~~] but are [~~is~~] not limited to, documentation of full compliance with the Uniform Relocation Act/104(d), Davis-Bacon Act, Match Documentation requirements, and Section 3 of the Housing and Urban Development Act of 1968, as applicable to the Development, and any other applicable requirement; and

(G) If applicable to the Development, certification from Architect or a licensed engineer that all HUD and REA environmental mitigation conditions have been met.

(11) The final draw request must be submitted within 24 months from loan closing. Extensions to this deadline may only be granted in accordance with §13.12(3) of this chapter.

§13.12. Pre-Closing 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) [~~(7)~~] of this section. Board approval is necessary for any other changes prior to closing.

(1) extensions of up to 6 months to the loan closing date specified by the Board in accordance with §13.11(m) [~~§13.8(a)(4)~~] of this Chapter. 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, and/or final draw deadline 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 increase [~~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.[~~; and~~]

[~~(7) An Applicant may request a change to the terms of a loan. Except for an award of funds to a Development that has had a *Force Majeure* event (and such an event necessitates an immediate change to the loan), such changes for federal awards will only be processed after the Development is reported to the federal oversight entity as completed. 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 to the Department, and will not require additional Executive Director or Board approval except where the amendment request was not allowed under the NOFA, or where the post closing change could have been anticipated prior to closing as determined by staff.~~]

§13.13. Post-Closing Amendments to Direct Loan Terms.

(a) Except in cases of Force, changes to federal awards will only be processed after the Development is reported to the federal oversight entity as completed and the last of the MFDL funds have been drawn.

(b) The Executive Director or authorized designee may approve amendments to loan terms post-closing as described in paragraphs (1) - (3) of this subsection. Board approval is necessary for any other changes post closing.

(1) Changes to the amortization or maturity date to accommodate the requirements of other lenders or maintain parity of term, provided the changes result in the Direct Loan continuing to meet the requirements of §13.8(c)(1) and (3);

(2) Resubordination of the Direct Loan in conjunction with refinancing provided the conditions in subparagraphs (A) - (E) are met:

(A) The Borrower is current with loan payments to the Department, and no notice has been given of any Event of Default on any MFDL loan. Histories of late or non-payment on any other MFDL loan may result in denial of the request;

(B) The refinance does not propose payment of outstanding debt or profit directly to any of the Development Owner or Developer parties (including the Limited Partners);

(C) A proposal for partial or full repayment of the MFDL lien is made with the request; and

(D) The new superior lien is in an amount that is equal to or less than the original senior lien and does not negatively affect the financial feasibility of the Development.

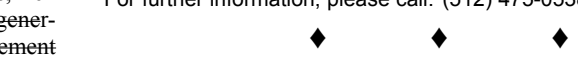
(E) Changes to accommodate refinancing with a new superior lien that is in an amount that exceeds the original senior lien and which will be directly applied to property improvements as evidenced by the loan or security agreements (exclusive of fees associated with the refinance and any required reserves) will be considered on a case by case basis.

(3) Changes required to the Department's loan terms or amounts that are part of an approved Asset Management Division work out arrangement.

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 October 16, 2017.

TRD-201704143
Beau Eccles
General Counsel
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: November 26, 2017
For further information, please call: (512) 475-0538



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §4.10

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §4.10, concerning Limitations on the Number of Courses That May Be Dropped under Certain Circumstances by Undergraduate Students. Specifically, the proposed amendments reflect changes to Texas Education Code (TEC), §51.907, that were enacted by Senate Bill 1782, 85th Texas Legislature, Regular Session. Senate Bill 1782 modified the number of courses that may be dropped under specific conditions regarding breaks in enrollment and academic progress.

Dr. Julie Eklund, Assistant Commissioner for Strategic Planning and Funding, Texas Higher Education Coordinating Board (Coordinating Board), has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering this change to the rules.

Dr. Eklund has determined the public benefit anticipated in administering this section to be alignment of the Texas Education and Administrative Codes. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to David Young, Senior Director, Funding, Strategic Planning and Funding, Texas Higher Education Coordinating Board (Coordinating Board), 1200 East Anderson Lane, Austin, Texas, 78752, david.young@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §51.907.

The amendments affect the following Texas Education Code, §51.907.

§4.10. Limitations on the Number of Courses That May Be Dropped under Certain Circumstances By Undergraduate Students.

(a) Beginning with the fall 2007 academic term, and applying to students who enroll in higher education for the first time during the fall 2007 academic term or any term subsequent to the fall 2007 term, an institution of higher education may not permit an undergraduate student a total of more than six dropped courses, including any course a transfer student has dropped at another institution of higher education, unless:

(1) - (2) (No change.)

(3) the enrollment is for a student who qualifies for a seventh course enrollment, who:

(A) has reenrolled at the institution following a break in enrollment from the institution or another institution of higher education covering at least the 24-month period preceding the first class day of the initial semester or other academic term of the student's reenrollment; and

(B) successfully completed at least 50 semester credit hours of course work at an institution of higher education that are not exempt from the limitation on formula funding set out in §13.104(1) - (6) of this title (relating to Exemptions for Excess Hours) before that break in enrollment.

(b) - (e) (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 October 13, 2017.

TRD-201704116
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: November 26, 2017
For further information, please call: (512) 427-6104

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CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES
SUBCHAPTER N. BACCALAUREATE DEGREE PROGRAMS

19 TAC §§9.670 - 9.678

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§9.670 - 9.678, concerning certain Baccalaureate Degree Programs. The intent of these new sections is to address Senate Bill 2118, 85th Texas Legislature, Regular Session which allows public junior colleges to offer certain baccalaureate degree programs.

Dr. Rex C. Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of proposing the rules listed above.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the potential increase in the number of students able to complete a bachelor's degree. It will enable community colleges to meet local workforce demand in selected industries which traditional higher education institutions cannot.

Comments on the proposed new rules may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new subchapter is in response to provisions enacted by the 85th Texas Legislature, Regular Session (SB 2118), which authorizes the Coordinating Board oversight for public junior colleges regarding offering certain baccalaureate degree programs. Texas Education Code (TEC), Subchapter L, §§130.301 - 130.312.

The new Subchapter affects the implementation of Texas Education Code (TEC), Subchapter L, §§130.301 - 130.312 and Texas Administrative Code, Chapter 9, Subchapter N, Baccalaureate Degree Programs, §§9.670 - 9.678.

§9.670. Purpose.

The purpose of this subchapter is to establish the Coordinating Board's oversight for public junior colleges regarding offering certain baccalaureate degree programs.

§9.671. Authority.

Authority for this subchapter is provided by Texas Education Code, §130.302 and §130.312, which provides the board with the authority to adopt rules to administer and approve certain baccalaureate degree programs at public junior colleges.

§9.672. Definitions.

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

(1) Baccalaureate degree programs--any grouping of subject matter courses consisting of at least 120 semester credit hours which, when satisfactorily completed by a student, will be entitled to a degree from a public junior college, public senior college or university or a medical or dental unit.

(2) Bachelor of Applied Arts and Science (BAAS)--builds on an Associate of Applied Science (AAS) degree, as defined in §9.1 of this chapter, relating to definitions, combined with enough additional core curriculum courses and upper level college courses to meet the minimum semester credit hour requirements for a bachelor's degree. The degree program is designed to grow professional management skills of the learner and meet the demand for leadership of highly technical professionals in the workplace. May also be called a Bachelor of Applied Technology (BAT) or Bachelor of Applied Science (BAS).

(3) Carl D. Perkins Career and Technical Act of 2006 (Public Law 109-270, and any successor(s) thereto). The Act requires core indicators of performance for career and technical education students to be developed by each eligible agency in its State plan.

(4) Coordinating Board--the Texas Higher Education Coordinating Board.

(5) External financial governing bodies--The Government Accounting Standards Board, Texas Comptroller of Public Accounts, or similar bodies that direct the structure and process of annual financial reporting. This does not include Boards of Regents or other bodies not having the ability to compel financial reporting changes at all institutions of higher education.

(6) General academic teaching institution--means any college or university as defined in Texas Education Code §61.003(3).

(7) Governing board--the body charged with policy direction of any public junior college, including but not limited to boards of directors, boards of regents, boards of trustees, and independent school district boards insofar as they are charged with policy direction of a public junior college.

(8) Institutions of higher education--any college or university as defined in Texas Education Code §61.003(8).

(9) Medical and dental unit--any college or university as defined in Texas Education Code §61.003(5).

(10) Pilot project--refers to a public junior college authorized by the Coordinating Board to offer a baccalaureate degree before January 1, 2017.

(11) Positive Assessment of the overall financial health of a district--A score of 2.0 or higher on the composite financial index as produced by the THECB in the annual Community College Financial Condition Report. (As required by the General Appropriations Act, 85th Texas Legislature, Article III, Public Community/Junior Colleges, Rider 12 and any successor(s) thereto).

(12) Public Junior College--any junior college as defined in Texas Education Code, §61.003(2).

§9.673. General Provisions.

(a) All baccalaureate degree programs offered at public junior colleges must comply with the provisions of this subchapter.

(b) A public junior college offering a baccalaureate degree program under this subchapter must meet all applicable accreditation requirements of the Southern Association of Colleges and Schools Commission on Colleges of a Level II institution.

(c) A public junior college district offering a baccalaureate degree program may not offer more than three baccalaureate degree programs at any time unless the institution previously participated in a pilot project to offer baccalaureate degrees as defined in Texas Education Code §130.0012(a) not-withstanding if accredited as a single institution or as separate institutions within a district.

(d) A public junior college may be approved to offer a baccalaureate degree program under this subchapter only if its junior college district:

(1) has a taxable property valuation of not less than $6 billion based on the preceding year's calculations as determined by the county's appraisal district. This valuation shall include the valuation of the taxing district as well as any branch campus maintenance tax valuations; and

(2) has received a positive assessment of the overall financial health, as defined in §9.672 of this chapter, on the most recent Community College Financial Condition Report. If changes to financial reporting, mandated by external financial governing bodies as defined in §9.672 of this chapter directing financial reporting processes, or other extraordinary factors have a short-term impact to the assessment of the financial health of the institution, the Coordinating Board may, at the Commissioner's discretion:

(A) Use the most recent report not impacted by the mandated changes; or

(B) Calculate the financial health correcting for the mandated changes or extraordinary factors.

(e) Offering a baccalaureate degree program under this subchapter does not otherwise alter the role and mission of a public junior college.

(f) Degree programs offered under this subchapter are subject to the continuing approval of the coordinating board.

§9.674. Program Requirements.

(a) Must meet the same criteria and standards the coordinating board uses to approve baccalaureate degree programs at general academic teaching institutions and medical and dental units.

(b) Before a baccalaureate degree program can be offered at a public junior college these additional requirements must be met:

(1) workforce need for the degree program must be documented in the region served by the junior college; and

(2) how the degree program would complement the other programs and course offerings of the junior college; and

(3) Carl D. Perkins Core performance indicators of success.

(c) Before a public junior college may be authorized to offer a baccalaureate degree program under this subchapter, the public junior college must submit a report to the coordinating board that includes:

(1) a long-term financial plan for receiving accreditation from the Southern Association of Colleges and Schools, Commission on Colleges;

(2) a long-term plan for faculty recruitment that:

(A) indicates recruitment strategies and the ability to pay the increased salaries of doctoral faculty; and

(B) ensures the program would not draw faculty employed by a neighboring institution offering a similar program; and

(3) detailed information on the manner of program and course delivery.

§9.675. Required Articulation Agreements.

(a) Before a public junior college may offer a baccalaureate degree program, the institution must provide at least three articulation agreements with general academic teaching institutions or medical and dental units that:

(1) provide detailed information regarding existing course transfer and dual enrollment pathways, detailing the maximum number of students that can be served by the agreements, and

(2) explain why existing facilities and resources cannot be expanded to meet workforce need, and

(3) documentation that the established articulation agreements are at capacity, or

(4) the reasons why no articulation agreements have been established.

(b) The Coordinating Board may not authorize a public junior college to offer a baccalaureate degree in a field if articulation agreements with general academic teaching institutions or medical and dental units are sufficient to meet the needs of that field.

(c) Each public junior college that offers a baccalaureate degree program under this subchapter must enter into a teach out agreement for the first five years of the program with one or more general academic teaching institutions or medical and dental units to ensure that students enrolled in the degree program have an opportunity to complete the degree if the public junior college ceases to offer the degree program.

(d) The coordinating board may require a general academic teaching institution or medical and dental unit that offers a comparable baccalaureate degree program to enter into an articulation agreement with the public junior college as provided by this subsection.

(e) Each public junior college that offers a program under this subchapter must inform all students who enroll in the program covered by the articulation agreement about the opportunity to complete the degree at a general academic teaching institution or medical and dental unit.

§9.676. Special Requirements for Nursing Degree Programs.

Before a public junior college may offer a baccalaureate degree program in nursing, the institution must:

(1) provide evidence to the coordinating board and the Texas Board of Nursing that the public junior college has secured adequate long-term clinical space and documentation from each clinical site provider indicating that the clinical site has not refused a similar request from a general academic teaching institution or medical and dental unit; and

(2) establish that the corresponding associate degree nursing program offered by the public junior college has been successful as indicated by job placement rates and licensing exam scores for the previous three years; and

(3) be a bachelor of science degree program that meets the standards and criteria the Texas Board of Nursing uses to approve pre-licensure degree programs at general academic teaching institutions and medical and dental units regardless of whether the program is a pre-licensure or post-licensure program; and

(4) be accredited or seeking accreditation by a national nursing accrediting body recognized by the United States Department of Education; and

(5) A public junior college offering a baccalaureate degree program in the field of nursing under this subchapter must demonstrate to the coordinating board that it will maintain or exceed the 2016-2017 academic year enrollment level of the institution's associate degree nursing program each academic year until the 2021-2022 academic year.

§9.677. Funding.

(a) Except as provided by subsection (b) of this section, a degree program created under this subchapter may be funded solely by a public junior college's proportionate share of state appropriations under §130.003, local funds, and private sources.

(b) This subchapter does not require the legislature to appropriate state funds to support a degree program created under this subchapter. Nor does this subsection prohibit the legislature from directly appropriating state funds to support junior-level and senior-level courses to which this subsection applies.

(c) The coordinating board shall weigh contact hours attributable to students enrolled in a junior-level or senior-level course offered under this subchapter used to determine a public junior college's proportionate share of state appropriations under §130.003 in the same manner as a lower division course in a corresponding field unless the college participated in a pilot project to offer baccalaureate degree programs as defined in Texas Education Code §130.0012.

(d) Notwithstanding subsection (c) of this section, in its recommendations to the legislature relating to state funding for public junior colleges, the coordinating board shall recommend that a public junior college that participated in a pilot project to offer baccalaureate degree programs as defined in Texas Education Code §130.0012 receive substantially the same state support for junior-level and senior-level courses in the fields of applied science, applied technology, dental hygiene, and nursing offered under this subchapter as that provided to a general academic teaching institution for substantially similar courses.

(e) In determining the contact hours attributable to students enrolled in a junior-level or senior-level course in the field of applied science, applied technology, dental hygiene, or nursing offered under this section used to determine a public junior college's proportionate share of state appropriations under §130.003, the coordinating board shall weigh those contact hours as necessary to provide the junior college the appropriate level of state support to the extent state funds for those courses are included in the appropriations.

(f) A public junior college may not charge a student enrolled in a baccalaureate degree program offered under this subchapter tuition and fees in an amount that exceeds the amount of tuition and fees charged by the junior college to a similarly situated student who is enrolled in an associate degree program in a corresponding field. This subsection does not apply to tuition and fees charged for a baccalaureate degree program in the field of applied science or applied technology

previously offered as part of a pilot project to offer baccalaureate degree programs as defined in Texas Education Code §130.0012.

§9.678. Reporting.

Each public junior college offering a baccalaureate degree program under this subchapter shall conduct a review of each baccalaureate degree program offered and prepare a biennial report on the operation, quality, and effectiveness of the junior degree programs in a format specified by the board. A copy of the report shall be delivered to the coordinating board by January 1 of each odd numbered year.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6104

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CHAPTER 13. FINANCIAL PLANNING SUBCHAPTER F. FORMULA FUNDING AND TUITION CHARGES FOR REPEATED AND EXCESS HOURS OF UNDERGRADUATE STUDENTS

19 TAC §13.101

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §13.101 concerning Authority. Specifically, the citation for the authority for institutions to charge a higher rate of tuition to students with repeated or excess hours is updated from §54.068 to §54.014. Also, the citation for the limits on the number of remedial or developmental education semester credit hours for which formula funding may be received is updated from §51.3062(l) to §51.340(a). In addition, the citation for the special provision that limits formula funding for a course for which a student would generate formula funding for the third time is updated from SB 1, General Appropriations Act, 79th Legislature, Regular Session, III-251, §49 to SB 1, General Appropriations Act, 85th Legislature, Regular Session, III-267, §40.

Dr. Julie Eklund, Assistant Commissioner, Strategic Planning and Funding, has determined that for each year of the first five years the section is in effect, there will not be a fiscal impact to the state.

Dr. Eklund has determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to David Young, Senior Director, Funding, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752, david.young@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §61.059(b), which provides the Coordinating Board with authority to review and revise formula recommendations for institutions of higher education.

The amendments affect Texas Administrative Code, Chapter 13, Formula Funding and Tuition Charges for Repeated and Excess Hours of Undergraduate Students, Subchapter F, Authority.

§13.101. Authority.

Texas Education Code, §54.014 [~~§54.068~~], provides that institutions may charge a higher rate of tuition to students with repeated or excess hours. Texas Education Code, §61.0595, limits formula funding for excess hours. SB 1, General Appropriations Act, 85th [~~79th~~] Legislature, Regular Session, III-267 [~~III-251~~], §40 [~~§49~~], limits formula funding for a course for which a student would generate formula funding for the third time. Texas Education Code, §51.340(a) [~~§51.3062(l)~~] limits the number of remedial or developmental education semester credit hours for which formula funding may be received.

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 Higher Education Coordinating Board
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19 TAC §13.104, §13.105

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §13.104, concerning Exemptions for Excess Hours and §13.105, concerning Limitation in Formula Funding for Repeated Hours for Attempted Courses.

Specifically, the proposed amendments to §13.104 reflect changes to Texas Education Code (TEC), §61.0595, that were enacted by Senate Bill 1782, 85th Texas Legislature, Regular Session. Senate Bill 1782 created an additional exemption regarding limitations on formula funding for excess semester credit hours.

Specifically, the proposed amendments to §13.105 reflect changes to Texas Education Code (TEC), §61.059, that were enacted by Senate Bill 1782, 85th Texas Legislature, Regular Session. Senate Bill 1782 modified the limitation on repeating a course, setting the conditions where a third attempt at a course may be submitted for formula funding under certain conditions.

Dr. Julie Eklund, Assistant Commissioner for Strategic Planning and Funding, Texas Higher Education Coordinating Board (Coordinating Board), 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 these changes to the rules.

Dr. Eklund has determined the public benefit anticipated in administering these sections to be alignment of the Texas Educa-

tion and Administrative Codes. 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 David Young, Senior Director, Funding, Strategic Planning and Funding, Texas Higher Education Coordinating Board (Coordinating Board), 1200 East Anderson Lane, Austin, Texas 78752, david.young@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §61.059.

The amendments affect the following Texas Education Code, §61.059.

§13.104. Exemptions for Excess Hours.

The following types of hours are exempt and are not subject to the limitation on formula funding set out in §13.103 of this title (relating to Limitation on Formula Funding for Excess Hours):

(1) - (2) (No change.)

(3) hours from remedial and developmental courses and/or interventions, workforce education courses, or other courses that would not generate academic credit that could be applied to a degree at the institution if the course work is within limitations specified in §13.107 of this title (relating to Limitation on Formula Funding for Remedial and Developmental Courses and Interventions) [~~the 27-hour limit at two-year colleges and the 18-hour limit at general academic institutions~~];

(4) hours earned by the student at a private institution or an out-of-state institution;

(5) hours not eligible for formula funding; [~~and~~]

(6) semester credit hours earned by the student before graduating from high school and used to satisfy high school graduation requirements; and[~~.~~]

(7) 15 semester credit hours not otherwise exempt earned toward a degree program by a student who:

(A) has reenrolled at the institution following a break in enrollment from the institution or another institution of higher education covering at least the 24-month period preceding the first class day of the initial semester or other academic term of the student's reenrollment; and

(B) successfully completed at least 50 semester credit hours of course work at an institution of higher education that are not exempt in paragraphs (1) - (6) of this section before that break in enrollment.

§13.105. Limitation on Formula Funding for Repeated Hours for Attempted Courses.

Institutions shall not submit for formula funding any hours for a course that is the same or substantially similar to a course that the student previously attempted for two or more times at the same institution unless the student meets the following conditions for a third attempt:[~~.~~]

(1) has reenrolled at the institution following a break in enrollment from the institution or another institution of higher education covering at least the 24-month period preceding the first class day of the initial semester or other academic term of the student's reenrollment; and

(2) has successfully completed at least 50 semester credit hours of course work at an institution of higher education that are not exempt from the limitation on formula funding set out in §13.104(1) - (6) of this title (relating to Exemptions for Excess Hours) before that break in enrollment.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF THE ACADEMIC CONTENT AREAS TESTING PROGRAM

DIVISION 3. SECURITY OF ASSESSMENTS, REQUIRED TEST ADMINISTRATION PROCEDURES AND TRAINING ACTIVITIES

19 TAC §101.3031

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §101.3031(b)(2) is not included in the print version of the Texas Register. The figure is available in the on-line version of the October 27, 2017, issue of the Texas Register.)

The Texas Education Agency proposes an amendment to §101.3031, concerning required test administration procedures and training activities to ensure validity, reliability, and security of assessments. The proposed amendment would adopt the *2018 Test Security Supplement* as part of the Texas Administrative Code.

Through the adoption of 19 TAC §101.3031, effective March 26, 2012, the commissioner exercised rulemaking authority relating to the administration of assessment instruments adopted or developed under Texas Education Code (TEC), §39.023, including procedures designed to ensure the security of the assessment instruments. The rule addresses purpose, administrative procedures, training activities, and records retention. As part of the administrative procedures, school districts and charter schools are required to comply with test security and confidentiality requirements delineated annually in test administration materials.

The proposed amendment to 19 TAC §101.3031, Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments, would update the rule by adopting the *2018 Test Security Supplement* as Figure:

19 TAC §101.3031(b)(2). The *2018 Test Security Supplement* describes the security procedures and guidelines that school districts and charter schools shall be required to follow to ensure the security and validity of the Texas assessment system.

Proposed within the *2018 Test Security Supplement* are five substantive changes for the administration of the 2018 assessments.

The first policy change applies to Texas English Language Proficiency Assessment System (TELPAS). TELPAS listening and speaking domains for Grades 2-12 will be assessed online instead of holistically rated. Districts will be required to issue headphones for the listening and speaking tests due to the new online format. The listening and speaking domains are transitioning from being holistically rated to being assessed online to standardize and improve the validity and reliability of these assessments and lessen the burden on districts to train and task staff to administer these assessments holistically. This policy change can be found in the *2018 Test Security Supplement* under Policy and Procedure Highlights.

The second policy change also applies to TELPAS. A new security oath was introduced for use by individuals proctoring the TELPAS Rater Training Calibration Activity. The security oath will ensure proctors are appropriately trained, understand their responsibilities, and are aware of any penalties that may result from violating test security. This policy change can be found in the *2018 Test Security Supplement* under Policy and Procedure Highlights.

The third change pertains to the dictionary and calculator requirement for the State of Texas Assessments of Academic Readiness (STAAR®) program. The STAAR® dictionary policy will be extended to Grades 3-5 to include the Grades 3-5 reading and Grade 4 writing assessments. Districts will now be required to provide students access to a calculator with four-function, scientific, or graphing capability for the STAAR® Grade 8 science assessment. These changes are based on educator input to increase accessibility to these tools. This policy change can be found in the *2018 Test Security Supplement* under Policy and Procedure Highlights.

Fourth, in response to requests from district personnel for additional flexibility and based on changes to technology, the Texas assessment program has updated its technology guidelines. The new guidelines are provided for districts to determine whether software or a device is appropriate for use on a state assessment. Districts are required to review any allowed or approved technology, including technology-based accommodations (i.e., accessibility features, designated supports) prior to its use during state testing to ensure it does not jeopardize the security or validity of an assessment. This policy change can be found in the *2018 Test Security Supplement* under Policy and Procedure Highlights.

Last, references to testing "accommodations" have been updated to use the term "designated supports." As a result of increased accessibility, the term "designated supports" has been incorporated to cover a larger group of affected individuals versus certain populations of students with disabilities. This policy change can be found throughout the *2018 Test Security Supplement* where appropriate.

The earlier versions of the security supplement will remain in effect with respect to the year for which they were developed.

The proposed amendment would also include a change in subsection (d) that would clarify the time frame for retaining records related to the security of assessment instruments. Records are required to be retained for five years rather than a minimum of five years.

The proposed amendment would establish in rule the test security procedures outlined in the *2018 Test Security Supplement.* Applicable procedures would be adopted each year as annual versions of the test security supplement are published.

The proposed amendment would have no additional effect on the paperwork required and maintained by school districts and charter schools.

FISCAL NOTE. Penny Schwinn, deputy commissioner for academics, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment. There is no effect on local economy for the first five years that the proposed amendment is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022. The proposed amendment does not impose a cost on regulated persons and, therefore, is not subject to Texas Government Code, §2001.0045.

PUBLIC BENEFIT/COST NOTE. Ms. Schwinn 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 informing the public of the security procedures for the 2018 test administrations. 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 BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. There is no direct adverse economic impact for small businesses, microbusinesses, and rural communities; 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 October 27, 2017, and ends November 27, 2017. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to *rules@tea.texas.gov.* 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 October 27, 2017.

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §26.010, which prohibits a student from being removed from a class or school by a parent in order to avoid a test and prohibits a student from being exempted from satisfying grade-level or graduation requirements in a manner acceptable to both the school district and the agency; TEC, §39.023(a), which requires school districts to administer the Grades 3-8 state-developed assessments to all eligible students; TEC, §39.025(a), which requires a student to pass each end-of-course assessment listed in TEC, §39.023(c), only for a course in which the student is enrolled and for which an end-of-course assessment is administered in order to receive a Texas diploma; TEC, §39.030(a), which requires school districts to ensure the security of the state's assessment instruments and

student answer documents in their preparation and administration; TEC, §39.0301, which requires the commissioner to establish procedures for the administration of the state's assessment instruments, including procedures designed to ensure the security of those assessments, specifies that the procedures the commissioner is required to establish must, to the extent possible, minimize disruptions to school operations and classroom environment, and stipulates that school districts must also minimize disruptions to school operations and the classroom environment when implementing the required assessment administration procedures; and TEC, §39.0304, which authorizes the commissioner to adopt rules to require training for school district employees involved in the administration of the state's assessments. This training may include qualifying components to ensure the school district personnel involved in an administration of the state's assessments possess the necessary knowledge and skills required to securely and reliably administer those assessments.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §26.010, 39.023(a), 39.025(a), 39.030(a), 39.0301, and 39.0304.

§101.3031. Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments.

(a) Purpose. To ensure that each assessment instrument is reliable and valid and meets applicable federal requirements for measurement of student progress, the commissioner of education shall establish test administration procedures and required training activities that support the standardization and security of the test administration process.

(b) Test administration procedures. These test administration procedures shall be delineated in the test administration materials provided to school districts and charter schools annually. Districts and charter schools must comply with all of the applicable requirements specified in the test administration materials. Test administration materials shall include, but are not limited to, the following:

(1) general testing program information;

(2) requirements for ensuring test security and confidentiality described in the *2018 ~~[2017]~~ Test Security Supplement* provided in this paragraph;
Figure: 19 TAC §101.3031(b)(2)
[~~Figure: 19 TAC §101.3031(b)(2)~~]

(3) procedures for test administration;

(4) responsibilities of personnel involved in test administration; and

(5) procedures for materials control.

(c) Training activities. As part of the test administration procedures, the commissioner shall require training activities to ensure that testing personnel have the necessary skills and knowledge required to administer assessment instruments in a valid, standardized, and secure manner. The commissioner may require evidence of successful completion of training activities. Test coordinators and administrators must receive all applicable training as required in the test administration materials.

(d) Records retention. As part of test administration procedures, the commissioner shall require school districts and charter schools to maintain records related to the security of assessment instruments for [~~a minimum of~~] five years.

(e) Applicability. The test administration procedures and required training activities established in the annual test security supplements for prior years remain in effect for all purposes with respect to the prior year to which it applies.

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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CHAPTER 102. EDUCATIONAL PROGRAMS
SUBCHAPTER JJ. COMMISSIONER'S RULES CONCERNING INNOVATION DISTRICT

19 TAC §102.1307, §102.1309

The Texas Education Agency (TEA) proposes amendments to §102.1307 and §102.1309, concerning innovation districts. The proposed amendments would reflect changes made by Senate Bill (SB) 1566 and SB 463, 85th Texas Legislature, Regular Session, 2017.

Through 19 TAC Chapter 102, Subchapter JJ, adopted effective September 13, 2016, the commissioner exercised rulemaking authority relating to the applicable processes and procedures for innovation districts.

Section 102.1307, Adoption of Local Innovation Plan, addresses the requirements and procedures for a district's initial adoption of a local innovation plan. SB 1566, 85th Texas Legislature, Regular Session, 2017, added the TEC, §12A.0071, to require that a district of innovation post a copy of the innovation plan prominently on the district website and, within 15 days of adoption, amendment, or renewal, provide the TEA with a copy of the plan for posting on the agency website. The proposed amendment to §102.1307 would add new subsections (f) and (g) to address these requirements.

Section 102.1309, Prohibited Exemptions, specifies the statutory provisions from which districts of innovation may not exempt themselves. SB 463, 85th Texas Legislature, Regular Session, 2017, added the TEC, §28.02541, to provide alternative graduation requirements for certain students. Since the TEC, §12A.004, prohibits exemptions from graduation requirements, the proposed amendment to §102.1309 would add the TEC, §28.02541, to the list of prohibited exemptions in subsection (a)(1)(C).

FISCAL NOTE. A.J. Crabill, deputy commissioner for governance, 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 enforcing or administering the amendments. There is no effect on local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022. The proposed amendments do not impose a cost on regulated persons

and, therefore, are not subject to Texas Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT: TEA staff has determined that the proposed amendments do not have a government growth impact pursuant to Texas Government Code, §2001.0221.

PUBLIC BENEFIT/COST NOTE. Mr. Crabill has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be ensuring the public is informed of a district's local innovation plan and providing school districts with clarification on which statutes are not allowed to be exempted from their local innovation plan. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. There is no direct adverse economic impact for small businesses, microbusinesses, and rural communities; 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 October 27, 2017, and ends November 27, 2017. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to *rules@tea.texas.gov.* 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 October 27, 2017.

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §12A.0071, as added by Senate Bill 1566, 85th Texas Legislature, Regular Session, 2017, which requires a district of innovation to post a copy of the innovation plan prominently on the district website and, within 15 days of adoption, amendment, or renewal, provide the Texas Education Agency with a copy of the plan for posting on the agency website; and TEC, §12A.009, which authorizes the commissioner to adopt rules to implement the TEC, Chapter 12A, Districts of Innovation.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §12A.0071, as added by Senate Bill 1566, 85th Texas Legislature, Regular Session, 2017, and §12A.009.

§102.1307. Adoption of Local Innovation Plan.

(a) The board of trustees may not vote on adoption of a proposed local innovation plan unless:

(1) the final version of the proposed plan has been available on the district's website for at least 30 days;

(2) the board of trustees has notified the commissioner of education of the board's intention to vote on adoption of the proposed plan; and

(3) the district-level committee established under the Texas Education Code (TEC), §11.251, has held a public meeting to consider the final version of the proposed plan and has approved the plan by a majority vote of the committee members. This public meeting may occur at any time, including up to or on the same date at which the board intends to vote on final adoption of the proposed plan.

(b) A board of trustees may adopt a proposed local innovation plan by an affirmative vote of two-thirds of the membership of the board.

(c) On adoption of a local innovation plan, the district:

(1) is designated as a district of innovation under this subchapter for the term specified in the plan but no longer than five calendar years, subject to the TEC, §12A.006;

(2) shall begin operation in accordance with the plan; and

(3) is exempt from state requirements identified under the TEC, §12A.003(b)(2).

(d) The district shall notify the commissioner of approval of the plan along with a list of approved TEC exemptions by completing the agency form provided in the figure in this subsection.
Figure: 19 TAC §102.1307(d) (No change.)

(e) A district's exemption described by subsection (c)(3) of this section includes any subsequent amendment or redesignation of an identified state requirement, unless the subsequent amendment or redesignation specifically applies to an innovation district.

(f) The district shall ensure that a copy of the local innovation plan is posted on the district's website in accordance with the TEC, §12A.0071, for the term of the designation as an innovation district.

(g) Not later than the 15th day after the date on which the board of trustees finalizes a local innovation plan either through adoption, amendment, or renewal, the district shall provide a copy of the current local innovation plan to the Texas Education Agency for posting on the agency website.

§102.1309. Prohibited Exemptions.

(a) An innovation district may not be exempted from the following sections of the Texas Education Code (TEC) and the rules adopted thereunder:

(1) a state or federal requirement, imposed by statute or rule, applicable to an open-enrollment charter school operating under the TEC, Chapter 12, Subchapter D, including, but not limited to, the requirements listed in the TEC, §12.104(b), and:

(A) TEC, Chapter 22, Subchapter B;

(B) TEC, Chapter 25, Subchapter A, §§25.001, 25.002, 25.0021, 25.0031, and 25.004;

(C) TEC, Chapter 28, §§28.002, 28.0021, 28.0023, 28.005, 28.0051, 28.006, 28.016, 28.0211, 28.0213, 28.0217, 28.025, 28.0254, 28.02541, 28.0255, 28.0258, 28.0259, and 28.026;

(D) TEC, Chapter 29, Subchapter G;

(E) TEC, Chapter 30, Subchapter A;

(F) TEC, §30.104;

(G) TEC, Chapter 34;

(H) TEC, Chapter 37, §§37.006(l), 37.007(e), 37.011, 37.012, 37.013, and 37.020; and

(I) TEC, Chapter 39;

(2) TEC, Chapter 11, Subchapters A, C, D, and E, except that a district may be exempt from the TEC, §11.1511(b)(5) and (14) and §11.162;

(3) TEC, Chapter 13;

(4) TEC, Chapter 41;

(5) TEC, Chapter 42;

(6) TEC, Chapter 44, §§44.0011, 44.002, 44.003, 44.004, 44.0041, 44.005, 44.0051, 44.006, 44.007, 44.0071, 44.008, 44.009, 44.011, 44.0312, 44.032, 44.051, 44.052, 44.053, and 44.054;

(7) TEC, Chapter 45, §§45.003, 45.0031, 45.005, 45.105, 45.106, 45.202, 45.203; and

(8) TEC, Chapter 46.

(b) In addition to the prohibited exemptions specified in subsection (a) of this section, an innovation district may not be exempted from:

(1) a requirement of a grant or other state program in which the district voluntarily participates;

(2) duties that the statute applies to the execution of that power if a district chooses to implement an authorized power that is optional under the terms of the statute; and

(3) requirements imposed by provisions outside the TEC, including requirements under the Texas Government Code, Chapter 822.

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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TITLE 22. EXAMINING BOARDS

PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

CHAPTER 781. SOCIAL WORKER LICENSURE

The Texas State Board of Social Worker Examiners (board) proposes amendments to §§781.102, 781.203, 781.204, 781.316, 781.404, 781.603, and new 781.223 concerning the licensure and regulation of social workers.

BACKGROUND AND PURPOSE

The proposed amendments to the rules eliminate the Advanced Practitioner specialty recognition, as the Association of Social Worker Boards (ASWB) will no longer offer the examination for the Advanced Practitioner recognition. The proposed amendments also modify what is required at the termination of the client relationship, clarify requirements for supervision towards licensure, and modify processes for complaints filed outside the board's jurisdiction. The new section defines requirements for technology assisted services. These amendments and the new rule are intended to streamline complaint processing by giving the executive director greater discretion, allow for greater flexibility in supervision by allowing a greater use of technology based supervision while still maintaining confidentiality safeguards, and update the ethical obligations of social workers.

SECTION-BY-SECTION SUMMARY

This summary considers only those sections which were substantially changed in language, meaning, or intent.

The amendments to §781.102 and §781.316 will remove existing language relating to the Advanced Practitioner specialty recognition.

The amendment to §781.203 details more specific guidelines when a service provider terminates the client relationship and to facilitate the appropriate transfer of services.

The amendments to §781.204 detail more specific guidelines for social workers engaging in electronic practice, the location of the client receiving services, and defines the degree of consanguinity and affinity of familial relationships when restricting the borrowing or lending of money or items of value.

The amendments to §781.404 clarify the requirements that board-approved supervisors must follow when providing supervision. Specifically, the amendments allow licensees to receive group supervision exclusively or in combination with individual supervision, and if supervision occurs via audio, web technology, or other electronic supervision techniques, it must occur via HIPAA compliant electronic techniques.

The amendment to §781.603 modifies the process of complaints that clearly do not fall within the board's jurisdiction.

New rule §781.223 will implement guidelines regarding the use of technology when providing social work services.

FISCAL NOTE

Alice Bradford, Executive Director, has determined that for each year of the first five years the proposed new section and amendments sections will be in effect, there will be no anticipated cost or saving, nor effect on revenue, to local government as a result of the proposed rule changes. There will be a minimal anticipated fiscal cost to state government as a result of lost revenue from no longer collecting fees for the Licensed Master Social Worker- Advanced Practitioner (LMSW-AP) from §718.316.

Since examination fees for the board are not paid to the state, examination fees for the Advanced Practitioner do not affect revenue for the board. Fees under current laws and rules for the board to which eliminating the specialty recognition would apply are as follows.

As set forth in 22 TAC §781.316(a)(6) - $20 for initial application and licensure fee for specialty recognition.

In addition, a $5 Office of Patient Protection (OPP) fee under Occupations Code §101.307 applies to initial social worker licensure applications. A $6 Texas.gov fee under Government Code, §2054.252 applies to initial social worker licensure applications.

In fiscal year 2016, the board received zero initial LMSW-AP applications, one upgrade application, and 153 renewal applications. Thus, an estimated loss of revenue per eligible LMSW-AP upgrade applicant can be expected to be $20, plus the OPP and Texas.gov surcharges. Based upon the current rate of new LMSW-AP applications per year, the department estimates a minimal fiscal loss to state government as a result of lost revenue. The board further used the average initial LMSW-AP ap-

plication fee of $100, plus the applicable surcharges totaling an initial application rate of $111 as the base rate. These figures would result in an estimated $0 loss in revenue for year one; a $0 loss in revenue for year two; a $0 loss in revenue for year three; a $0 loss in revenue for year four; and an $0 loss in revenue for year five of the rules being in effect, for a total estimated loss of revenue for the Board of approximately $0. However, the board does not anticipate an impact to its ability to meet the costs of administering the program through existing revenue under the current fee structure, even with this loss of revenue due to the new fee waivers.

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

Ms. Bradford has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. This determination was made because the proposed amendments and new rule do not apply to small or micro-businesses or to rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and does not impose a cost on regulated persons.

REGULATORY ANALYSIS

The board has determined this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. "Major environmental rule" is defined as "a rule the specific intent of which is to protect the environment or reduce risks 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." The proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC BENEFIT

In addition, Ms. Bradford has determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the licensing and regulation of social workers.

PUBLIC COMMENT

Comments on the proposal may be submitted to Alice Bradford, Executive Director, Texas State Board of Social Worker Examiners, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347, or by email to lsw@dshs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rules" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §781.102

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code §505.201, which authorizes the board to adopt rules necessary for the performance of its duties.

The amendments affect Texas Occupations Code, Chapter 505.

§781.102. Definitions.

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

(1) - (45) (No change.)

(46) LMSW-AP--Licensed Master Social Worker with the Advanced Practitioner specialty recognition for non-clinical practice. This specialty recognition will no longer be conferred after September 1, 2017. Licensees under a board-approved supervision plan for this specialty recognition before September 1, 2017 will be permitted to complete supervision and examination for this specialty recognition.

(47) - (55) (No change.)

(56) Supervisor, board-approved--A person meeting the requirements set out in §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for [~~LMSW-AP and~~] Independent Practice Recognition), to supervise a licensee towards the LCSW, [~~LMSW-AP or~~] Independent Practice Recognition, or as a result of a board order. A board-approved supervisor will denote having this specialty recognition by placing a "-S" after their credential initials, e.g., LBSW-S, LMSW-S or LCSW-S.

(57) Supervision--Supervision includes:

(A) - (D) (No change.)

[~~(E) non-clinical supervision of a Licensed Master Social Worker who is providing non-clinical social work service toward qualifications for the LMSW-AP; this supervision is delivered by a board-approved supervisor;~~]

(E) [~~(F)~~] supervision of a probationary Licensed Master Social Worker or Licensed Baccalaureate Social Worker providing non-clinical services by a board-approved supervisor toward licensure under the AMEC program;

(F) [~~(G)~~] board-ordered supervision of a licensee by a board-approved supervisor pursuant to a disciplinary order or as a condition of new or continued licensure.

(58) - (62) (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 October 16, 2017.

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Tim Brown
Chair
Texas State Board of Social Worker Examiners
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For further information, please call: (512) 776-6972

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SUBCHAPTER B. CODE OF CONDUCT AND PROFESSIONAL STANDARDS OF PRACTICE

22 TAC §§781.203, 781.204, 781.223

STATUTORY AUTHORITY

The amendments and new rule are proposed under Texas Occupations Code §505.201, which authorizes the board to adopt rules necessary for the performance of its duties.

The amendments and new rule affect Texas Occupations Code, Chapter 505.

§781.203. General Standards of Practice.

This section establishes standards of professional conduct required of a social worker. The licensee, following applicable statutes:

(1) (No change.)

(2) shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from the relationship. If continued professional services are indicated, the licensee shall take reasonable steps to facilitate transferring the client by providing the client with the name and contact information of three sources of service [~~to an appropriate source of service~~];

(3) - (9) (No change.)

§781.204. Relationships with Clients.

(a) - (j) (No change.)

(k) Electronic practice may be used judiciously as part of the social work process and the supervision process. Social workers engaging in electronic practice, providing services to clients located in the State of Texas, must be licensed in Texas and adhere to provisions of this chapter.

(l) - (m) (No change.)

(n) The licensee or relatives to the fourth degree of consanguinity or affinity of the licensee may not borrow or lend money or items of value to clients or relatives to the fourth degree of consanguinity or affinity of clients.

(o) - (q) (No change.)

§781.223. Technology in Social Work Practice.

When social workers use technology to provide services, they are subject to all rules and statutes, including this chapter and Occupations Code, Chapter 505, as if providing face to face services.

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

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SUBCHAPTER C. THE BOARD

22 TAC §781.316

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code §505.201, which authorizes the board to adopt rules necessary for the performance of its duties.

The amendments affect Texas Occupations Code, Chapter 505.

§781.316. Fees.

(a) The following are the board's fees:

(1) - (5) (No change.)

(6) additional license fee for [~~AP or~~] Independent Practice specialty recognition--$20 biennially;

(7) - (21) (No change.)

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

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

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SUBCHAPTER D. LICENSES AND LICENSING PROCESS

22 TAC §781.404

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code §505.201, which authorizes the board to adopt rules necessary for the performance of its duties.

The amendments affect Texas Occupations Code, Chapter 505.

§781.404. Recognition as a Board-approved Supervisor and the Supervision Process.

(a) (No change.)

(b) A person who wishes to be a board-approved supervisor must file an application and pay the applicable fees as described in §781.316 of this chapter.

(1) - (2) (No change.)

(3) The board-approved supervisor must have completed a supervisor's training program accredited by [~~acceptable to~~] the board.

(4) - (11) (No change.)

(12) A board-approved supervisor who wishes to provide supervision towards licensure as an LCSW or towards specialty recognition in Independent Practice (IPR) or Advanced Practitioner (LMSW-AP), which is supervision for professional growth, must comply with the following.

(A) Supervision toward licensure or specialty recognition may occur in one-on-one sessions, in group sessions, or in a com-

bination of one-on-one and group sessions. Session may transpire in the same geographic location, or via audio, web technology or other electronic supervision techniques that comply with HIPAA and Texas Health and Safety Code, Chapter 611, and/or other applicable state or federal statutes or rules.

[(A) Supervision toward licensure or specialty recognition may occur in one-on-one sessions; in a combination of individual and group sessions; or in board-approved combinations of supervision in the same geographical location, supervision via audio and visual web technology, and other electronic supervision techniques.]

(B) - (H) (No change.)

(13) (No change.)

(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 F. COMPLAINTS AND VIOLATIONS

22 TAC §781.603

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code §505.201, which authorizes the board to adopt rules necessary for the performance of its duties.

The amendments affect Texas Occupations Code, Chapter 505.

§781.603. Complaint Procedures.

(a) - (g) (No change.)

(h) If the allegations clearly do not fall within the board's jurisdiction, the executive director will [may] consult with [both] the attorney for the board and the lead investigator; [as well as the board chair or his/her designee, and] if all agree, the executive director [may close the complaint and] will present the case(s) [case] to the Ethics Committee at the committee's next meeting for closure. The Ethics Committee retains the right to request full disclosure of any case closed and order a comprehensive hearing of the complaint.

(i) - (s) (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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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 14. TEXAS BULLION DEPOSITORY

34 TAC §§14.1 - 14.20

The Comptroller of Public Accounts proposes new §14.1 - 14.20, concerning the implementation of the Texas Bullion Depository. These sections are proposed to be located in new Chapter 14, entitled "Texas Bullion Depository."

The proposal is to comply with Government Code, Chapter 2116. Government Code, §2116.005(a) permits the comptroller to adopt rules regarding the Texas Bullion Depository as appropriate to ensure compliance with the law and to protect the interests of the depository, depository account holders, this state and the agencies, political subdivisions, and instrumentalities of this state, and the public at large.

Section 14.1 provides definitions.

Section 14.2 establishes standards for deposit. Under this rule the depository will record deposits of precious metals in units of troy ounces. Deposits may be further classified by reference to other indicators as applicable. The depository may restrict the types, sources and forms in which precious metals may be deposited and is required to publish on its website the types, sources and forms that may be deposited with the depository.

Section 14.3 provides that a depository account holder may make a written demand for withdrawal of precious metals in accordance with the terms of the depository account agreement. This rule permits the depository to prescribe the form or format of a written demand for withdrawal. This rule further details how and when the depository must respond to a written demand for withdrawal.

Section 14.4 provides for the process by which a depository account holder may transfer all or part of a depository account to another person in accordance with the terms of the depository account agreement.

Section 14.5 outlines that a person seeking to establish a depository account must be eligible to open an account under applicable law and depository policy. This rule also provides that submission of a signed application to establish an account constitutes acceptance of the terms applicable to the account.

Section 14.6 permits the depository to prescribe the manner in which a contract for depository account may be executed electronically.

Section 14.7 provides that amendments to the depository account agreement may be made either by agreement between the parties or unilaterally by the depository upon providing written notice to depository account holders.

Section 14.8 outlines the responsibilities of depository account holders to give notice to the depository of any discrepancies in account statements.

Section 14.9 authorizes the comptroller to set fees, service charges, and penalties to be charged to a depository account holder.

Section 14.10 outlines the requirements for transferring a depository account to another person.

Section 14.11 provides that the depository has an automatic lien on depository accounts to secure the payment of any fees, charges, or other obligations that are owed by a depository account holder to the depository. Under this rule, the depository may liquidate all or part of a depository account to the extent necessary to satisfy the obligation. Alternatively, the depository may suspend withdrawal privileges for the depository account until the obligation is satisfied. This rule also outlines the requirements a third party has to meet to have a pledge of a depository account recognized by the depository.

Section 14.12 provides that applicable provisions of the Estates Code govern a depository account and provides that the depository may prescribe the forms that must be used to implement the provisions of the Estates Code.

Section 14.13 provides that powers of attorney must be executed on a form prescribed by the depository and must be notarized.

Section 14.14 provides that the depository shall refer certain matters related to the purported confiscation of precious metals as part of a generalized declaration of illegality or emergency relating to the ownership of precious metals to the attorney general for resolution. This rule requires the depository to suspend withdrawal privileges from the depository until the matter is resolved. This rule permits the depository to prescribe procedures by which voluntary transfers of precious metals may continue to take place between depository account holders.

Section 14.15 requires the comptroller to publish on the depository website the official exchange rates used in pricing precious metals transactions.

Section 14.16 requires the comptroller to provide to depository account holders the statements or other documents necessary to report taxable gains and losses arising from depository transactions in a manner that is compliant with Federal law.

Section 14.17 requires depository agents to maintain suitable systems and processes as the comptroller may prescribe to ensure that all reportable transactions may be reported to the depository on a daily basis. This rule also allows the comptroller to prescribe the transactions that are reportable under this rule.

Section 14.18 requires depository agents to submit periodic reports of all depository transactions. This rule permits the comptroller to prescribe the form and formats of the reports to be filed under this section. The comptroller may require the forms to be filed electronically.

Section 14.19 permits the depository to prescribe all forms or documents that may be required to implement this chapter and may require that such forms be submitted electronically. This rule also permits that any notice required to be provided to a depository account holder by this chapter, the rules, or under the account agreement may be provided electronically.

Section 14.20 outlines which persons or entities are required to be licensed as depository agents.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the proposed new rules would benefit the public by implementing the statutory provision that created a depository available to public and private entities for the storage of precious metals. There is no anticipated economic cost to individuals who are required to comply with the proposed rules. The proposed new rules would have no significant impact on small businesses or rural communities.

Comments on the proposals may be submitted to Tom Smelker, Administrator, Texas Bullion Depository, Comptroller of Public Accounts, at *tom.smelker@cpa.texas.gov* or at P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

These new rules are proposed under Government Code, §§2116.005, 2116.006, 2116.007, 2116.008, 2116.010, 2116.012, 2116.023, 2116.024, 2116.025, 2116.052, and 2116.053.

The new sections implement Government Code, Chapter 2116.

§14.1. Definitions.

As used in this chapter and in these rules, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) Account services--Are those services and transactions performed by a depository agent that are made in connection with creating, transferring, clearing, settling, or liquidating the rights and interests of a depository account holder in a depository account.

(A) Account services include:

(i) assisting retail customers in opening or creating a depository account;

(ii) accepting deposits from depository account holders on behalf of the depository;

(iii) processing withdrawal requests;

(iv) assisting retail customers in transferring depository account balances;

(v) assisting retail customers in closing a depository account; and

(vi) otherwise accessing the depository account of a depository account holder to help manage the account on behalf of the depository account holder.

(B) For the purposes of this chapter account services do not include:

(i) participation as a party or counterparty to a purchase or sale of bullion or specie, if the purchase or sale is an independent transaction and the bullion or specie is not being purchased or sold on behalf of the depository; or

(ii) arranging the shipment, delivery or transport of precious metals, bullion or specie to the depository, if the transaction is made or provided by a person who is not authorized to act on behalf of the depository and the transaction does not involve accessing the account of a depository account holder.

(2) Administrator--The bullion depository administrator appointed by the comptroller to administer, supervise, and direct the operations and affairs of the depository or the administrator's designee.

(3) Bullion--Precious metals that are formed into uniform shapes and quantities such as ingots, bars, or plates, with uniform content and purity, as are suitable for or customarily used in the purchase, sale, storage, transfer, and delivery of bulk or wholesale transactions in precious metals.

(4) Business day--A day other than a Saturday, Sunday, or banking holiday for a bank chartered under the laws of this state.

(5) Deposit--The establishment of an executory obligation of the depository to deliver to the order of the person establishing with the depository the obligation, on demand, a quantity of a specified precious metal, in bullion or specie, or a combination of bullion and specie, equal to the quantity of the same precious metal delivered by or on behalf of the depositor into the custody of the depository or a depository agent, subject to the terms of the depository account agreement.

(6) Depositor--A person who makes a deposit.

(7) Depository--The Texas Bullion Depository, a state agency, created by Government Code, §2116.002.

(8) Depository account--The business arrangement between the depository and a depositor through which the depository provides services to a depositor and records transactions that evidence the rights, interests, and entitlements established in favor of a depositor with respect to a deposit of bullion or specie.

(9) Depository account holder--The original depositor for a depository account, or the successor or assignee of the original depositor.

(10) Depository agent--A person who:

(A) has entered into an agreement with the depository to serve as an intermediary between the depository and a retail customer to provide depository agent services; and

(B) is licensed or exempted from being licensed under Texas Finance Code, Subchapter J, to provide depository agent services.

(11) Depository agent services--Services rendered to the general public including purchasing, selling, transferring, accepting, transporting, delivering, or otherwise dealing in precious metals, bullion or specie, that are made:

(A) for or on behalf of the depository; and

(B) in connection with providing account services to retail customers of the depository.

(12) For or on behalf of the depository--Pursuant to express authorization by the depository. A service or transaction is not made for or on behalf of the depository unless the person providing the service or transaction has entered into an agreement with the depository to act as a depository agent and the person acts only within the scope of authority conferred by the agreement or the depository is a party to the transaction. The depository is not a party to a transaction involving the shipment, transport, or delivery of precious metals, bullion or specie merely by virtue of the fact that the depository is the destination for such shipment, transport, or delivery.

(13) Precious metal--A metal, including gold, silver, platinum, palladium, and rhodium, that:

(A) bears a high value-to-weight ratio relative to common industrial metals; and

(B) customarily is formed into bullion or specie.

(14) Retail customer--An individual, partnership, or corporation who is not engaged in the business of buying, selling, investing or managing precious metals, bullion, or specie for others, or who is not otherwise an eligible contract participant as that term is defined by the Commodity Exchange Act, 7 U.S.C §1a, as amended.

(15) Retail transaction--A contract for the purchase or sale of bullion or specie to a retail customer.

(16) Specie--A precious metal stamped into coins of uniform shape, size, design, content, and purity, suitable for or customarily used as currency, as a medium of exchange, or as the medium for purchase, sale, storage, transfer, or delivery of precious metals in retail or wholesale transactions.

§14.2. Standards for Deposit.

(a) If the depository determines that doing so is necessary to ensure compliance with the law, prevent fraud, or otherwise protect the interests of the depository, this state, its agencies, or political subdivisions of this state, the depository may:

(1) refuse to open a depository account for any person, whether acting in the person's own right, as trustee, or in another fiduciary capacity;

(2) deny, refuse, or return any deposit of bullion or specie;

(3) close or otherwise terminate without notice the depository account of any person; or

(4) refuse to honor a request for the transfer of an account or account balance.

(b) To protect the security and integrity of the depository, the depository need not provide a reason for the refusal, denial, or closure or an account under subsection (a) of this section.

(c) Deposits of bullion and specie, regardless of form, will be recorded in units of troy ounces pure and will specify the type and quantity of each precious metal that is deposited.

(d) Deposits of bullion and specie that are credited to a depository account may be further classified by reference to:

(1) the particular form in which the metals were deposited;

(2) the mint at which the metals were produced;

(3) denomination;

(4) assay mark; or

(5) any other indicator as applicable.

(e) The depository may restrict the types and sources of precious metals, bullion, or specie that may be deposited with the depository.

(f) The depository may restrict the forms in which deposits of precious metals may be made to those forms that conveniently lend themselves to measurement and accounting in units of troy ounces and standardized fractions of troy ounces.

(g) The depository shall publish on its website the types, sources, forms, and weights and measures of precious metals, bullion, or specie that may be deposited with the depository.

§14.3. Written Demand for Withdrawal or Delivery.

(a) As provided by the depository account agreement, a depository account holder may request a withdrawal of a quantity of precious metal as is available in the depository account holder's depository account. A withdrawal request must be made using a form or format

prescribed by the depository. The form or format prescribed by the depository may be electronic and must be submitted either on the depository website or in person to the depository or a depository agent as provided in the account agreement and in accordance with policies established by the depository. All requests for withdrawals must be made in units of troy ounces pure or other applicable weights and measures as established by the depository.

(b) Upon receipt of a withdrawal request by either the depository or depository agent, the depository shall make a delivery of the precious metals to the depository account holder within five business days.

(c) The depository may deliver precious metals to the address the depository account holder designated as their address of record, the facility of the depository agent at which presentment was made, or at a facility designated by the depository.

(d) For the purposes of this chapter, the requirement to make a delivery of precious metals upon presentment of a suitable written demand within five business days shall be considered met if the precious metals are shipped to the depository account holder's address of record or are otherwise made available for pick-up at the facility of the depository at which presentment was made or a facility designated by the depository on or before the fifth business day after the written demand is received by the depository.

§14.4. Transfer of Depository Account Balances.

(a) As provided by the depository account agreement, a depository account holder may transfer to another depository account holder or to a person who at the time of the transfer is not a depository account holder, any portion of a precious metal as is available in the depository account holder's depository account. A transfer request must be made using a form prescribed by the depository. The form prescribed by the depository may be electronic and must be submitted either on the depository website or in person to the depository or a depository agent as provided in the account agreement and in accordance with policies established by the depository. All transfer must be made in units of troy ounces pure or other applicable weights and measures as established by the depository.

(b) If a payee under this section is a depository account holder, the depository shall adjust the depository account balances to reflect the transfer by reducing the payor's depository account balance and increasing the depository account balance of the payee accordingly.

(c) If a payee is not a depository account holder, upon receipt of a valid transfer request, the depository shall at the option of the payee:

(1) deliver to the payee the amount of precious metals transferred by the transfer request, minus any applicable fees; or

(2) if the payee is otherwise eligible to open a depository account under applicable laws and regulations, allow the payee to establish a depository account and credit the balance of the payee's account accordingly.

(d) The depository may require a non-account holder to provide information as is reasonably necessary to ensure that a delivery of precious metals to a non-account holder under this section is made in accordance with applicable law and policies established by the depository. Notwithstanding any other provision in these rules, the depository is not obligated to honor a transfer request if doing so violates any applicable law or depository policy. A delivery made to a non-account holder payee under this subsection may only be made in person to the payee at a facility designated by the depository.

(e) As provided by the depository account agreement or depository policy, precious metals transferred under this section are subject to a settlement period for up to ten business days and may not be sold, withdrawn or otherwise transferred during that period unless approved by the depository.

§14.5. Establishment of Depository Accounts.

To establish a depository account, a depositor must complete an account application form and provide the documentation necessary to establish that the depositor is eligible to open a depository account under applicable law and depository written policy. Submission of a signed application constitutes acceptance of the terms applicable to the depository account, and the depository shall not be required to execute the contract in order for the contract to be effective.

§14.6. Electronic and Digital Signatures.

The execution of a contract for a depository account may be made by electronic or digital transmission in a manner prescribed by the depository.

§14.7. Amendment of Account Agreement; Notices.

The depository and the depository account holder may amend the account agreement by mutual consent, or the depository may amend the deposit contract by providing thirty days written notice of the amendment to the account holder. The depository may provide the required notice by sending the notice by e-mail or via its website.

§14.8. Account Statements.

(a) The depository may provide periodic account statements to depository account holders. As provided in the depository account agreement, upon receipt of an account statement the depository account holder is responsible for:

(1) promptly examining each account statement received from the depository; and

(2) giving notice of any discrepancy in the account statement to the depository within thirty days of the date of the account statement.

(b) Provision of a periodic account statement constitutes notice of denial of liability for any transaction that is not reflected on the account statement.

§14.9. Fees; Service Charges; Penalties.

(a) The comptroller may set fees, service charges, and penalties to be charged a depository account holder for services or activities regarding a depository account, including fees for an overdraft, an insufficient fund check or draft, or a stop payment order. The comptroller may set or change the fees established under this rule by publishing the applicable fees on the depository website and by sending a notice of any change in fees to depository account holders. The notice may be sent electronically.

(b) The depository may suspend withdrawal privileges for a depository account or liquidate all or any portion of a depository account as necessary to satisfy any unpaid fees, service charges or penalties as outlined in the depository account agreement or as provided in §14.12 of this title (relating to Applicability of Estates Code).

§14.10. Transfer of Depository Account.

(a) A depository account may be transferred to another person only on presentation to the depository of:

(1) evidence of transfer satisfactory to the depository; and

(2) an application for the transfer submitted by the person to whom the depository account is to be transferred.

(b) A person to whom a depository account is to be transferred must accept the transferred account subject to the terms of the depository account agreement and must otherwise be eligible to open an account under applicable laws and regulations. If a person to whom a depository account is to be transferred is not eligible to open an account under applicable law and these rules, the depository may close the account and take all steps that are reasonably necessary to deliver to the transferee the balance of the depository account, minus any applicable fees.

(c) The depository may require the transferee to provide information as is reasonably necessary to ensure that a delivery of precious metals under this section is made in accordance with applicable law and policies established by the depository.

§14.11. Lien on Depository Account.

(a) Without the need of any further agreement or pledge, the depository has a lien on each depository account owned by a depository account holder to secure any fees, charges, or other obligations owed or that may become owed to the depository in connection with any of the depository account holder's depository accounts.

(b) On default in the payment or in the satisfaction of a depository account holder's obligation, the depository, without notice to or consent of the depository account holder, may, to the extent necessary to pay or satisfy the obligation, plus any applicable fees:

(1) transfer on the depository's books all or part of the balance of a depository account;

(2) liquidate all or part of the balance of a depository account; or

(3) suspend withdrawal privileges for all or part of a depository account.

(c) To be recognized by the depository, a pledge to a third party by a depository account holder of the holder's rights, interest, and entitlements in and to a depository account must be made on a form prescribed by the depository. A pledge made to a third party in this manner is subject to any lien of the depository on a depository account for unpaid fees, charges, or other obligations of the depository account holder, irrespective of whether the depository's lien was created before or after the pledge to a third party was made or perfected.

(d) On the satisfaction of other requirements of law with respect to the perfection and enforcement of a pledge of that type, and subject to a lien of the depository and any applicable fees, the depository may liquidate all or part of the balance of a depository account to the extent necessary to pay or satisfy the pledge, plus any applicable fees.

(e) If the depository liquidates all or part of a depository account to pay or satisfy a lien of the depository or a pledge under this section, the depository shall only liquidate the minimum amount of precious metal as is available in the depository account to pay or satisfy the lien or pledge, as determined by reference to the exchange rates applicable at the time of the liquidation. Upon liquidation, the depository shall apply the proceeds to satisfy the lien or pledge and shall refund to the depository account holder any amount in excess of the amount required to pay or satisfy the lien or pledge. The depository shall not be obligated to a depository account holder for any difference between the official exchange rate at the time a request for liquidation was received and the proceeds actually received upon liquidation after satisfaction of any unpaid fees.

(f) The depository may require that a secured party seeking to enforce a pledge under this section provide information as is reasonably necessary to ensure that a delivery of precious metals under this section is made in accordance with applicable law and policies established by the depository.

§14.12. Applicability of Estates Code.

The applicable provisions of Estates Code, Chapters 111, 112, and 113, govern a depository account. To be effective, the designation or revocation of rights of survivorship, payment on death, or transfer on death, must be on forms prescribed by the depository unless otherwise provided by law.

§14.13. Powers of Attorney.

To be effective, a power of attorney by a depository account holder to manage or withdraw precious metals from the depository account holder's depository account must be executed using a form prescribed by the depository and be notarized. Powers of attorney shall be effective for the length of time designated on the form prescribed by the depository unless earlier revoked by the depository account holder in writing or upon written notice of the death or adjudication of incompetency of the depository account holder.

§14.14. Confiscations, Requisitions, Seizures, and Certain Other Actions.

On receipt of notice of any transaction described by Government Code, §2116.023(a), with respect to all or any portion of the balance of a depository account, the depository shall refer the matter to the appropriate agency for resolution. Until the matter is resolved, the depository shall suspend withdrawal privileges associated with the balances of the depository account. The depository may prescribe procedures to allow voluntary transfers of depository account balances among depository account holders to continue to take place unaffected by the suspension as authorized by this chapter or other applicable law.

§14.15. Official Exchange Rates.

The comptroller shall publish on the depository website the official exchange rate for pricing precious metals transactions in terms of United States dollars or other currencies.

§14.16. Accounting and Reporting of Taxable Gains.

The comptroller shall provide depository account holders with statements or other required documentation needed to report taxable gains and losses arising from depository transactions in a manner that complies with federal law or as prescribed by the Internal Revenue Service. To the extent permitted by law, any statement or other documentation required under this section may be provided electronically.

§14.17. Electronic Information Sharing Systems and Processes.

(a) Depository agents must maintain suitable systems and processes as the comptroller may prescribe for electronic information sharing and communication. All reportable transactions effected on behalf of the depository by depository agents must be reported to the depository and integrated into the depository's records not later than 11:59:59 p.m. on the date of each transaction.

(b) The comptroller may prescribe in a depository agent agreement the transactions that are reportable under this rule.

§14.18. Periodic Reports.

(a) A depository agent shall submit monthly, quarterly, and annual reports of all depository transactions not later than the 15th day of the month following the expiration of the period with respect to which such report is submitted. The comptroller may specify the forms or formats of the reports required by this section and may require the reports to be filed electronically.

(b) The periodic reports required under this section are in addition to the reports required to be submitted in accordance with Finance Code, Chapter 151.

§14.19. Forms; Notices.

(a) Unless otherwise required by law, the depository may prescribe all forms or other documents required to implement this chapter and may require that the forms be submitted electronically.

(b) To the extent applicable and permitted by law, any notices, statements, or other documents required to be provided to a depository account holder by this chapter, these rules, or under the depository account agreement, as amended, may be provided electronically by e-mail or via the depository website.

§14.20. Depository Agents; Licensing Requirements.

(a) Unless otherwise exempt or excluded from licensing under this chapter or as provided by Finance Code, Subchapter J, a person who provides or offers to provide depository agent services for or on behalf of the depository must be licensed in accordance with Finance Code, Subchapter J.

(b) A service provided to the general public in the nature of purchasing, selling, transferring, accepting, transporting, delivering, or otherwise dealing in precious metals, bullion or specie, is not considered a depository agent service unless the service is made:

(1) for or on behalf of the depository; and

(2) in connection with providing account services to retail customers of the depository.

(c) A person who ships, transports or delivers, or arranges the shipment, transport, or delivery of precious metals, bullion or specie to the depository on behalf of another person is not considered a depository agent of the depository unless the person:

(1) has a written agency agreement with the depository to act on behalf of the depository; and

(2) provides account services for or on behalf of the depository to the general public.

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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Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: November 26, 2017
For further information, please call: (512) 475-0387

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PART 6. TEXAS MUNICIPAL RETIREMENT SYSTEM

CHAPTER 127. MISCELLANEOUS RULES

34 TAC §127.7, §127.10

The Board of Trustees ("Board") of the Texas Municipal Retirement System ("TMRS" or "System") proposes an amendment to 34 Texas Administrative Code ("TAC") §127.7 Rollovers of Plan Distributions and a new rule 34 TAC §127.10 Conformity with Internal Revenue Code: Additional Provisions. Section 127.7 contains provisions relating to the rollover of certain distributions by TMRS in accordance with applicable requirements of the Internal Revenue Code of 1986, as amended (the "Code").

In January 2016, TMRS filed an application with the Internal Revenue Service ("IRS") to obtain a current favorable Determination Letter on the terms of the TMRS plan documents, which include, but are not limited to, the statutes found in Title 8, Subtitle G, Chapters 851 through 855 of the Texas Government Code (the "TMRS Act") and the administrative rules found in TAC Title 34, Part 6, Chapters 121 through 129 (the "TMRS Rules"). The draft language of the proposed amendment to §127.7 and new §127.10 was submitted to the IRS with the Determination Letter application and is designed to ensure compliance with applicable qualified plan document requirements under the Code. In June 2017, the IRS issued a favorable Determination Letter to TMRS, subject to the adoption of the draft rule amendment and new rule submitted with the application.

The proposed amendment to §127.7 and proposed new §127.10 contain provisions required by the Code and the IRS in order for TMRS to maintain the tax-qualified plan status of the System and rely on the recent favorable IRS Determination Letter. Section 127.7 is proposed to be amended to modify subsection (c) to add language specifying that certain eligible rollover distributions from TMRS can be paid in a direct trustee-to-trustee transfer to a Roth IRA. The federal Pension Protection Act of 2006 ("PPA") amended certain Code provisions relating to rollovers, including amendments to permit plan participants to make direct rollovers to a Roth IRA. Section 127.7 was amended in 2011 to reflect the PPA amendments to rollover provisions, and TMRS has been operating in accordance with the PPA rollover provisions, but the IRS has indicated it wants §127.7 to be further amended to also expressly refer to direct trustee-to-trustee transfers to a Roth IRA.

Proposed new §127.10 contains provisions that clarify and provide that: (i) TMRS is a governmental plan within the definition of Code §414(d); (ii) as a governmental plan, TMRS is subject to the Code's pre-ERISA vesting rules; (iii) for purposes of the TMRS Act, employees include a participating municipality's common law employees but exclude leased employees under Code §414(n); (iv) contributions made to TMRS may be returned only in very limited circumstances allowed by the Code and applicable regulations; (v) buybacks under the TMRS Act will comply with Code §415(k)(3) and its regulations, and any "permissive service credit" (as defined in Code) purchases will comply with Code §415(n) and its regulations; (vi) TMRS will comply with Code §401(a)(31)(B), relating to the automatic rollover of certain mandatory distributions; and (vii) the Section includes specific cross-references to Code §401(a)(9) and §401(a)(9)(G) and TMRS's ability, as a governmental plan, to rely on a reasonable and good faith interpretation of Code §401(a)(9).

The amendment to §127.7 and the new §127.10 are proposed and implement the authority granted under the following provisions of the TMRS Act: (i) Texas Government Code §855.102, which allows the Board to adopt rules it finds necessary or desirable for the efficient administration of the System; (ii) Texas Government Code §852.103, which authorizes the Board to adopt rules to implement the provisions of §852.103 relating to rollover distributions permitted under the Code; (iii) Texas Government Code §854.003, which authorizes the Board to adopt rules it determines necessary to comply with the distribution requirements

of IRC §401(a)(9); and (iv) Texas Government Code §855.607, which authorizes the Board to adopt rules that modify the plan to the extent the Board considers necessary for the System to be a qualified plan, and provides that rules adopted by the Board relating to plan qualification issues are considered a part of the plan.

On September 21, 2017, the Board determined that the proposed rule amendment and new rule are necessary to comply with federal law, as set forth above, and approved the publication of this rule amendment and new rule proposal for comment.

Mr. David Gavia, Executive Director of TMRS, has determined that for the first five-year period the proposed amendment and new rule are in effect there will be no fiscal implication for state or local governments as a result of administering or enforcing the amendment and new rule as proposed. Mr. Gavia also has determined that for each of the first five years that the proposed amendment and new rule would be in effect, the public benefit anticipated as a result of administering the proposed amendment and new rule would be TMRS's compliance with applicable Code and IRS requirements in order to maintain the qualified plan status of the System and rely on the recent favorable IRS Determination Letter.

To Mr. Gavia's knowledge, there would be no anticipated economic cost to persons who are required to comply with the new rule or rule amendment as proposed. Persons who might be affected by the amendment or new rule are TMRS participating municipalities, members, retirees, and their beneficiaries. To Mr. Gavia's knowledge, these proposed rule changes are not anticipated to have an adverse economic impact on small businesses, micro-businesses, local economies or rural communities, and it would be to the benefit of those municipalities participating in TMRS, including those in rural communities, to maintain the qualified plan status of the System.

Comments may be submitted in writing to Christine M. Sweeney, General Counsel, TMRS, P.O. Box 149153, Austin, Texas 78714-9153, faxed to (512) 225-3786, or submitted electronically to Ms. Sweeney at *csweeney@tmrs.com.* Comments must be received no later than 30 days from the date of publication of the proposed rule amendment and new rule in the *Texas Register.*

Statutory Authority: The amendments are proposed and implement the authority granted under the following provisions of the TMRS Act: (i) Texas Government Code §855.102, which allows the Board to adopt rules it finds necessary or desirable for the efficient administration of the System; (ii) Texas Government Code §852.103, which authorizes the Board to adopt rules to implement §852.103 as it relates rollover distributions permitted under the Code; (iii) Texas Government Code §854.003, which authorizes the Board to adopt rules it determines necessary to comply with the distribution requirements of IRC §401(a)(9); and (iv) Texas Government Code §855.607, which authorizes the Board to adopt rules that modify the plan to the extent the Board considers necessary for the System to be a qualified plan.

Cross-reference to Statutes: Texas Government Code, Chapters 852, 854, and 855.

§127.7. Rollovers of Plan Distributions.

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

(c) Notwithstanding anything in this section to the contrary, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax contributions which are not includible in gross income. However, such portion may be paid only in a direct trustee-to-trustee transfer to an individual retirement account or annuity described in Internal Revenue Code §§408(a) or (b), or to a qualified defined contribution plan described in Internal Revenue Code §401(a) or an Internal Revenue Code §403(b) annuity contract that, in each case, agrees to separately account for amounts so transferred, and the earnings on these amounts, including separate accounting for the portion of such distribution which was includible in gross income (if not for the rollover exclusion) and the portion of such distribution which was not includible in income (determined without regard to the rollover exclusion). Without limiting the foregoing, for distributions made after December 31, 2006, such portion may be also be paid in a direct trustee-to-trustee transfer to any type of qualified plan described in Internal Revenue Code §401(a) (whether or not a defined contribution plan) that agrees to separately account for amounts so transferred, and the earnings on these amounts, including separate accounting for the portion of such distribution which was includible in gross income (if not for the rollover exclusion) and the portion of such distribution which was not includible in income (determined without regard to the rollover exclusion). Without limiting the foregoing, for distributions made after December 31, 2007, a portion of a distribution shall not fail to be an eligible rollover distribution merely because it is paid in a direct trustee-to-trustee transfer to a Roth IRA as described in Internal Revue Code §408A(b).

(d) - (e) (No change.)

§127.10. Conformity with Internal Revenue Code: Additional Provisions.

(a) The system is a governmental plan within the meaning of §414(d) of the Internal Revenue Code of 1986, as amended from time to time (the "Internal Revenue Code").

(b) The rights of members to benefits accrued, to the extent funded, will become vested to the extent required by, and upon the events set forth in, Treasury Regulation §1.401-6(a)(1).

(c) The term "employee," as defined in §851.001(8) of the Act, shall be limited to common law employees of a municipality, and shall exclude leased employees within the meaning of Internal Revenue Code §414(n).

(d) With respect to §851.002 of the Act, and notwithstanding any provision of the system to the contrary, reversions will be permitted only to the extent allowed under the Internal Revenue Code and any related guidance thereunder, including, but not limited to, a contribution made because of a good faith mistake of fact that is returned within one year of the date the contribution was made as permitted under Revenue Ruling 91-4, or as permitted by subsequent guidance.

(e) Repayments of previously paid out benefits, including the reestablishment of credit under §853.003 of the Act, shall comply with Internal Revenue Code §415(k)(3) and any Treasury Regulations thereunder. For purchases of permissive service credit that are described in Internal Revenue Code §415(n), including any such purchases under Chapter 853 of the Act, the provisions of Internal Revenue Code §415(n) and any Treasury Regulations thereunder shall apply, including the provisions of Internal Revenue Code §415(n)(3)(B) that, except as provided in Internal Revenue Code §415(n)(3)(D):

(1) no more than five years of nonqualified service credit within the meaning of Internal Revenue Code §415(n)(3)(C) may be taken into account under Internal Revenue Code §415(n); and

(2) no nonqualified service credit within the meaning of Internal Revenue Code §415(n)(3)(C) may be taken into account under Internal Revenue Code §415(n) before a member has at least five years of participation in the system.

(f) Notwithstanding any provision of the system to the contrary, the system shall comply with Internal Revenue Code §401(a)(31)(B) and applicable Treasury Regulations thereunder.

(g) With respect to §854.003(d) and §854.104(f) of the Act, and notwithstanding any provision of the system to the contrary, the system shall comply with Internal Revenue Code §401(a)(9), including the minimum distribution incidental benefits rule of Internal Revenue Code §401(a)(9)(G), pursuant to a reasonable and good faith interpretation of Internal Revenue Code §401(a)(9).

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 October 16, 2017.

TRD-201704138
David Gavia
Executive Director
Texas Municipal Retirement System
Earliest possible date of adoption: November 26, 2017
For further information, please call: (512) 225-3754

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 6. LICENSE TO CARRY HANDGUNS

SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §6.1

The Texas Department of Public Safety (the department) proposes amendments to §6.1, concerning Definitions. The changes to §6.1 are intended to clarify the meaning of terms used in the administrative rules.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be greater clarity in the meaning of terms used in administrative rules applicable to the License to Carry program.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email at *https://www.dps.texas.gov/rsd/contact/default.aspx*. Select "Handgun Licensing". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This rule is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §411.197 which authorizes the director to adopt rules to administer this subchapter.

Texas Government Code, §411.004(3) and §411.197, are affected by this proposal.

§6.1. Definitions.

Unless defined in this section or the context clearly indicates otherwise, all terms used in this chapter have the meanings provided by Government Code, §411.171: [~~The words and terms detailed in this section, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.~~]

(1) Act--Texas Government Code, Chapter 411, Subchapter H.

(2) Certificate--The authorization to instruct and test applicants for a license to carry a handgun under the Act.

(3) Department--The Texas Department of Public Safety

(4) License--The license to carry a handgun issued under the Act.

(5) License holder--A person licensed to carry a handgun under the Act.

[~~(6) Qualified handgun instructor--A person certified under the Act to instruct and test applicants for a license to carry a handgun under the Act.~~]

(6) [~~(7)~~] Warning--A written notification of a violation.

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 October 13, 2017.

TRD-201704097
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 26, 2017
For further information, please call: (512) 424-5848

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SUBCHAPTER B. ELIGIBILITY AND APPLICATION PROCEDURES FOR A LICENSE TO CARRY A HANDGUN

37 TAC §6.14, §6.16

The Texas Department of Public Safety (the department) proposes amendments to §6.14 and §6.16, concerning Eligibility and Application Procedures for a License to Carry a Handgun. Amendments to §6.14 and §6.16 are made as a result of 85th Legislative Session, HB 3784 and SB 16 respectively. Additional changes have been made to §6.14 to clarify proficiency requirements.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the ability to find and understand the requirements and procedures to obtain certification as a License to Carry online course provider.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email at *https://www.dps.texas.gov/rsd/contact/default.aspx*. Select "Handgun Licensing". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These rules are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §411.197, which authorizes the director to adopt rules to administer this subchapter.

Texas Government Code, §411.004(3) and §411.197, are affected by this proposal.

§6.14. Proficiency Requirements.

(a) The figure in this section provides the proficiency demonstration requirements applicable to applicants for either a license to carry a handgun or certification as a qualified handgun instructor. Figure: 37 TAC §6.14(a)(No change.)

(b) A handgun license applicant must score at least 70% on both the written examination and the proficiency examination.

(c) A handgun license applicant will have three opportunities to pass the written examination and the proficiency examination within a 12 month period.

(d) The qualified handgun instructor or approved online course provider must submit all examination failures [~~of the written examination or the proficiency examination~~] to the department on the class completion notification. The notification [~~and~~] must indicate if the failure occurred after the handgun license applicant had been given three opportunities to pass the examinations.

(e) On successful completion of the written or [~~and~~] proficiency examinations, the qualified handgun instructor or approved online course provider, as applicable, shall certify the handgun license applicant has established his or her proficiency on the form and in the manner determined by the department.

(f) All certificates of training (LTC-100 or LTC-101) are valid for one year from the date of issuance. Any certificate of training that is required in conjunction with an application must be valid on the date the completed application is submitted to the department.

§6.16. Renewal of License.

(a) An expired license may be renewed for up to one year after the expiration date. If the license has been expired for more than one year, the former license holder must submit an original license application to receive a license in the future.

(b) Renewal notices will be provided to a license holder no more than six months before the expiration date to the mailing address currently reported to the department by the license holder.

[~~(c) The renewal fee for a license will be $70 except as otherwise provided by the Act.~~]

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

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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SUBCHAPTER C. QUALIFIED HANDGUN INSTRUCTOR LICENSE

37 TAC §§6.32, 6.40, 6.42

The Texas Department of Public Safety (the department) proposes amendments to §§6.32, 6.40, and 6.42, concerning Qualified Handgun Instructor License. Amendments to §6.32 and §6.40 are made as a result of 85th Legislative Session, HB 3784.

The amendment to §6.42 is made to clarify a record retention obligation of instructors.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the ability to find and understand the requirements and procedures to obtain certification as a License to Carry Qualified Handgun Instructor.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email at *https://www.dps.texas.gov/rsd/contact/default.aspx.* Select "Handgun Licensing". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These rules are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §411.197 which authorizes the director to adopt rules to administer this subchapter.

Texas Government Code, §411.004(3) and §411.197, are affected by this proposal.

§6.32. Qualified Handgun Instructor Training Course.

(a) As part of the initial training course, the qualified handgun instructor applicant must demonstrate handgun proficiency and pass a written examination.

(b) Once a qualified handgun instructor applicant has submitted a complete application, the department will schedule the applicant for a qualified handgun instructor training course and notify the applicant of the date, time and location of the course. Only scheduled [~~qualified handgun instructor~~] applicants will be permitted to attend the course.

(c) A qualified handgun instructor applicant who is required to attend in person and is not able to attend the course of instruction for which he or she is scheduled may request to be rescheduled for another class. If the qualified handgun instructor applicant fails to attend this second scheduled class, the application will be terminated and the individual will be required to submit a new application in order to attend a course in the future.

§6.40. Facilities and Instruction.

(a) With the exception of online courses offered by approved online course providers, all [~~All~~] instruction must be conducted in person by qualified handgun instructors who hold a valid certificate in Texas. Guest instructors, webinars, and videos may not substitute for the required course hours.

(b) All classroom and range instruction for license applicants shall be conducted in this state. Classroom and range instruction may be subject to observation by the department, for purposes of ensuring compliance with the instruction and examination requirements. Instruction may not be conducted at a location not accessible to the department.

(c) The department's current curriculum must be used by the qualified handgun instructor.

§6.42. Record Retention.

(a) A qualified handgun instructor shall make available for inspection to the department any and all records maintained by the instructor under the Act. A qualified handgun instructor shall retain:

(1) the instructor's certificate of training;

(2) course materials including curriculum, lesson plans, presentations, and any other documents used during the course; and

(3) copies of reports submitted to the department.

(b) Records must be retained for a period of six years after completion. Records must be stored in a safe and secure place and must be available for inspection by the department.

(c) If the qualified handgun instructor certification is revoked or surrendered, the records subject to this section should be returned to the department.

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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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 26, 2017
For further information, please call: (512) 424-5848

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37 TAC §6.39

The Texas Department of Public Safety (the department) proposes the repeal of §6.39, concerning Prior Notice of Training Required. The department has determined the requirement imposed by this rule is unnecessary to the effective administration of the statute.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary administrative regulation.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email at *https://www.dps.texas.gov/rsd/contact/default.aspx* Select "Handgun Licensing". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §411.197 which authorizes the director to adopt rules to administer this subchapter.

Texas Government Code, §411.004(3) and §411.197, are affected by this proposal.

§6.39. Prior Notice of Training Required.

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 October 13, 2017.

TRD-201704101
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 26, 2017
For further information, please call: (512) 424-5848

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SUBCHAPTER E. APPROVED ONLINE COURSE PROVIDERS

37 TAC §§6.81 - 6.92

The Texas Department of Public Safety (the department) proposes new §§6.81 - 6.92, concerning Approved Online Course Providers. The proposal of new §§6.81 - 6.92 is necessary to implement the requirements of the 85th Legislative Session, HB 3784 which adds approved online course providers for the classroom instruction part of the handgun proficiency course.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the ability to find and understand the requirements and procedures to obtain certification as a License to Carry online course provider.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email at *https://www.dps.texas.gov/rsd/contact/default.aspx.* Select "Handgun Licensing". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These rules are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §411.197 which authorizes the director to adopt rules to administer this subchapter.

Texas Government Code, §411.004(3) and §411.197, are affected by this proposal.

§6.81. Approved Online Course Provider Application.

(a) An applicant for certification as an approved online course provider must have at least three years of experience in providing online course instruction. This experience must be through web-based technologies and must include the presentation of course material and the provision of student examinations. Uploaded video presentations alone are not sufficient to establish such experience.

(b) The applicant must submit verifiable documentation of the online course instruction experience required in subsection (a) and an affidavit attesting to the accuracy and validity of the documentation.

(c) If an incomplete approved online course provider application is received, the department will notify the applicant in writing the application is incomplete and specify the information needed to complete the application. The additional information must be submitted to the department within 90 days of the date of the deficiency notice. Failure to provide the required documentation within the specified time period will result in termination of the application.

(d) In addition to the provisions of this section, a person applying for a certificate as an approved online course provider must comply with all standards and requirements applicable to the eligibility and application procedure for a license to carry a handgun, as detailed in Subchapter B of this chapter.

(e) A current qualified handgun instructor who meets the qualifications for certification as an approved online course provider may obtain certification as an approved online course provider by submitting the appropriate application and fee. The instructor course is not required if the individual is currently an active qualified handgun instructor.

§6.82. Qualifying Scores.

(a) An approved online course provider applicant must pass a written exam with a minimum score of 80%. The applicant will be given two opportunities to pass the written exam during the training course.

(b) The department will terminate an applicant who fails to pass the written examination on the second attempt.

§6.83. Failure to Qualify for Certification.

An approved online course provider applicant who fails to qualify on their first attempt for certification will be given a preference for an opportunity to attend the normal course of instruction within 12 months.

§6.84. No Authority To Carry.

Certification as an approved online course provider does not authorize a person to carry a handgun.

§6.85. Instruction.

(a) Online courses are subject to review by the department, for purposes of ensuring compliance with the instruction and examination requirements.

(b) The department's current curriculum must be used by the approved online course provider.

(c) Approved online course providers shall issue certificates of course completion only to students who have successfully completed all elements of the department approved license to carry curriculum.

(d) Approved online course providers must develop and maintain a means to ensure the security and integrity of all student information.

§6.86. Approved Online Course Provider Reports to the Department.

(a) On completion of a training course by an applicant for a license, the approved online course provider who trained the applicant shall submit a class completion report to the department within five business days indicating only whether the applicant passed or failed.

(b) Reports must be submitted using the forms approved by the department.

§6.87. Record Retention.

(a) Approved online course providers must be located, or maintain a registered agent, in the State of Texas. Approved online course providers that process, deliver, or store curriculum materials, or student records of course completion to be used for the department approved license to carry a handgun course must be located within the United States.

(b) An approved online course provider shall make available for inspection to the department any and all records maintained by the provider under the Act. An approved online course provider shall retain:

(1) the approved online course provider's certificate of training;

(2) course materials including curriculum, lesson plans, presentations, and any other documents used during the course; and

(3) copies of reports submitted to the department.

(c) Records must be retained for a period of six years after completion. Records must be stored in a safe and secure place and must be available for inspection by the department.

(d) If an approved online course provider's certification is revoked or surrendered, any records retained under this section shall be returned to the department.

§6.88. Restrictions on Advertising and Promotional Material.

(a) An approved online course provider may not use the State Seal of Texas in advertising or promotional materials other than as provided in Business and Commerce Code, §17.08.

(b) An approved online course provider may not use the department's name or insignia, or the name of any division of the department, in advertising or promotional materials, in a manner misleading to the general public.

§6.89. Compliance.

Approved online course applicants and providers are required to comply with all applicable municipal ordinances, state and federal statutes, and rules, regulations, policies and operational procedures of the department. Failure to comply may constitute grounds for denial, suspension, or revocation of the person's approved online course provider certification or removal from training.

§6.90. Administrative Penalties.

(a) An approved online course provider may be subject to disciplinary action for violations of this chapter or the Act. The figure in this section provides the administrative penalty schedule for violations. Figure: 37 TAC §6.90(a)

(b) If multiple violations are found, the department may impose separate penalties for each violation as noted on the penalty schedule. The department may require multiple suspension periods be served consecutively based on the severity, duration, frequency and seriousness of the violations.

(c) Any violation of the same category committed after a prior finalized violation will be subject to an enhanced penalty. A finalized violation is a violation that was finally adjudicated or was not requested to be reviewed under §411.180 and §411.191 of the Act.

(d) The department may impose an enhanced penalty in cases involving particularly egregious, dangerous, or intentional violations.

(e) Review of the department's actions under this section are governed by §411.191 of the Act.

(f) No courses may be offered or conducted following a final suspension or revocation of the approved online provider's certification. Applications for a license to carry a handgun submitted based on a course taken from an approved online course provider whose certification is suspended or revoked will be rejected as incomplete.

§6.91. Renewal of Approved Online Course Provider Certification.

(a) The certificate of an approved online course provider expires on December 31 following the second anniversary after the date the certificate was issued.

(b) To renew certification, an approved online course provider must pay a fee of $100 and successfully complete the retraining courses required by the department. An approved online course provider whose certificate has expired may renew the certificate up to one year after its expiration. After one year, the provider must reapply as a new approved online course provider applicant.

§6.92. Online Renewal Course for Approved Online Course Provider Certification.

(a) An online renewal course for approved online course providers will be conducted every alternate renewal period. Approved online course provider applicants who are eligible for online retraining under §411.190(d-1) of the Act will be notified.

(b) An approved online course provider who is eligible to take the renewal course online must complete the course prior to the expiration of the approved online course provider's current certificate, but not earlier than six months prior to the date of expiration. If the approved online course provider fails to complete the course within six months of the date of expiration, the application will be terminated and the individual will be required to submit a new application.

(c) A written examination must be taken and passed with a minimum score of 80%.

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 October 13, 2017.

TRD-201704102
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 26, 2017
For further information, please call: (512) 424-5848

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CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.44

The Texas Department of Public Safety (the department) proposes amendments to §15.44, concerning Driver License Photograph. This amendment strikes the word color according to House Bill 1345 and House Bill 3050 enacted by the 85th Texas Legislature.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be increased transparency and better understanding of the examination requirements for licensed nonresidents.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Janie Sawatsky, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to *DLDrulecomments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This rule is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.121(a) are affected by this proposal.

§15.44. Driver [~~Drivers~~] License Photograph.

A [~~color~~] photograph of a licensee may be obtained through any medium which produces a retrievable visual image including, but not limited to, film, videotape, digital or visual imagery, or any other technology which may be approved by the director.

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 October 13, 2017.

TRD-201704103
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 26, 2017
For further information, please call: (512) 424-5848

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SUBCHAPTER K. INTERAGENCY AGREEMENTS

37 TAC §15.172

The Texas Department of Public Safety (the department) proposes amendments to §15.172, concerning Issuance by Counties and Municipalities. These amendments add municipalities as authorized entities to issue certain renewal and duplicate driver licenses and identification cards according to House Bill 3050 enacted by the 85th Texas Legislature.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined the proposal only imposes incidental changes to existing requirements for small businesses, micro-businesses or rural communities that would not result in any additional cost to small or micro-business or a rural community affected by this proposal. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be increased transparency and better understanding of the examination requirements for licensed nonresidents.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Janie Sawatsky, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to *DLDrulecomments@dps.texas.gov*. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This rule is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.009 are affected by this proposal.

§15.172. Issuance by Counties and Municipalities.

A county or municipality may enter into a Memorandum of Understanding with the department for the program to issue certain renewal and duplicate driver licenses, personal identification certificates, and election identification certificates if it:

(1) has [~~county~~] employees who have successfully passed the department's background check;

(2) has [~~county~~] employees who have successfully completed the department prescribed training set out in the Memorandum of Understanding; and

(3) conforms to the operating requirements and standards of the Memorandum of Understanding between the department and the county or municipality.

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 October 13, 2017.

TRD-201704104
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 26, 2017
For further information, please call: (512) 424-5848

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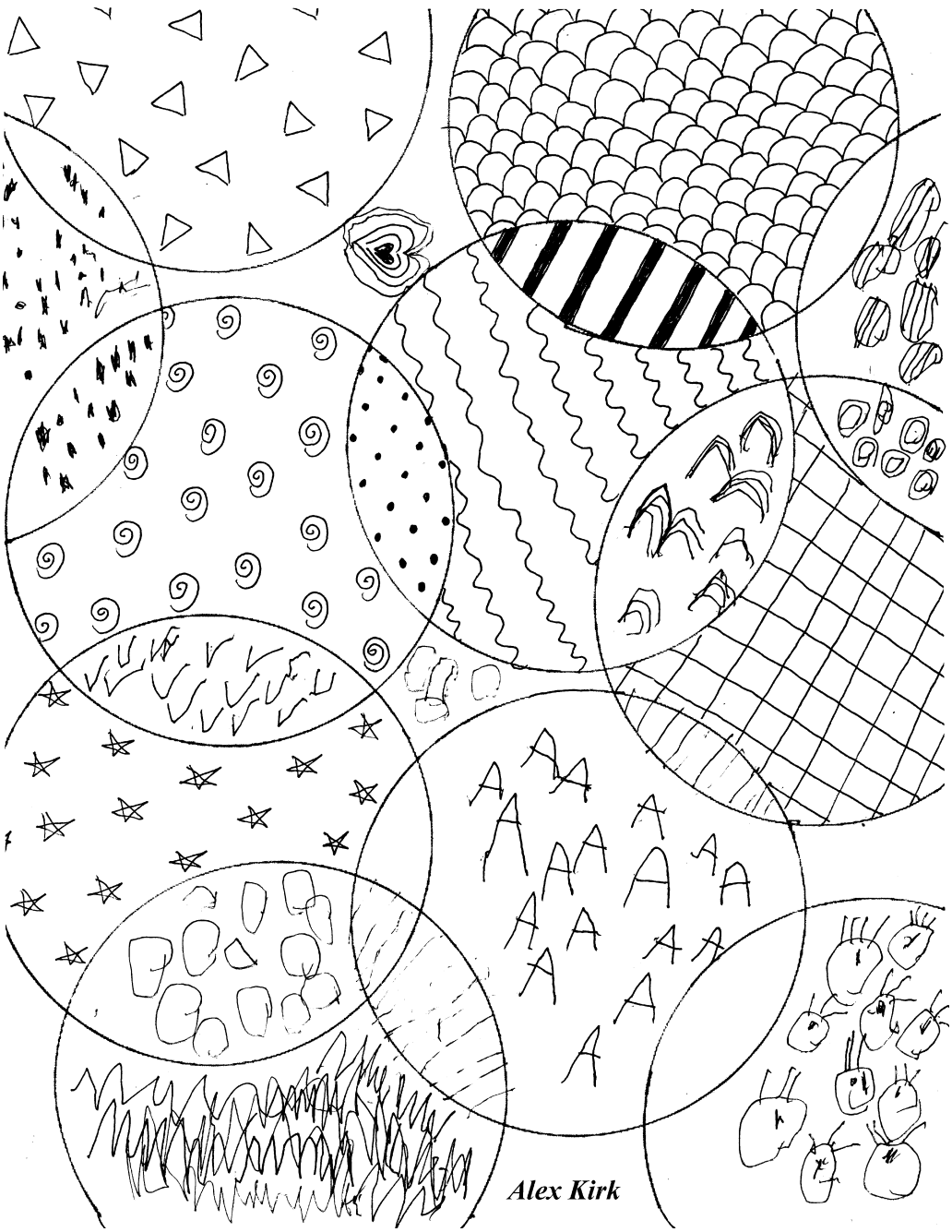

Alex Kirk

ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER O. DELIVERY SYSTEM AND PROVIDER PAYMENT INITIATIVES

1 TAC §353.1301

The Texas Health and Human Services Commission (HHSC) adopts amendments to §353.1301, concerning General Provisions. The amendments are adopted without changes to the proposed text as published in the August 18, 2017, issue of the *Texas Register* (42 TexReg 4041), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

In March of 2017, HHSC adopted a series of rules governing delivery system and provider payment initiatives through Medicaid managed care organizations (MCOs) (42 TexReg 13). These initiatives are, generally, funded through intergovernmental transfers (IGT) from local governmental entities. Given that these programs are not funded with state general revenue, HHSC must ensure, to the greatest extent possible, that no state dollars are at risk through the operation of these programs. A disallowance by the Centers for Medicare & Medicaid Services (CMS) is one potential risk to general revenue, unless HHSC can ensure that funds from another source are available.

As originally adopted in March of 2017, §353.1301(j) described the procedure HHSC would use in the case of a disallowance. The rule delineated between a disallowance for impermissible provider-related donations and all other disallowances. If there was a disallowance for impermissible provider-related donations, the rule required HHSC to recoup the disallowed amount from transferring governmental entities that caused the disallowance. If there was a disallowance for reasons other than an impermissible provider-related donation, HHSC reserved the right to recoup the disallowed amount from MCOs, providers, or governmental entities.

HHSC adopts amendments to §353.1301(j) in an effort to provide HHSC more flexibility. HHSC reserves the right, through this amendment, to recoup from MCOs, providers, or governmental entities in any disallowance. In order to ensure that there is no risk to general revenue, to the greatest extent possible, HHSC will require that if a recoupment for a disallowance results in a subsequent disallowance, the entity that HHSC initially recouped against will face a recoupment for the subsequent disallowance.

In addition, HHSC clarified the heading for §353.1301(k) by changing the heading from "Recoupment" to "Overpayment."

COMMENTS

The 30-day comment period ended September 18, 2017. During this period, HHSC received comments regarding the proposed rule from two commenters, Nueces County Hospital District and Teaching Hospitals of Texas. A summary of comments relating to the rule and HHSC's responses follows.

Comment: One commenter proposed to revise the amendment such that HHSC would not have the authority to recoup funds from a governmental entity if that entity was acting solely in its capacity to IGT.

Response: HHSC appreciates the comment but declines to change the rule as suggested. When the amendment was initially proposed, HHSC sought to gain flexibility such that the most appropriate entity would be responsible for a disallowance for impermissible provider-related donations. To accept this proposed change would defeat the purpose of the amendment in the first place. HHSC cannot, at this time, contemplate a reason why it would need to take an action against a governmental entity that only IGTs for Medicaid payments to others. However, HHSC cannot foreclose the possibility that such a reason might exist. No changes were made in response to this comment.

Comment: One commenter supported the changes to the rule to allow for the continued success of IGT-based programs.

Response: HHSC appreciates the comment. No changes were made in response to this comment.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with board rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code, Chapter 32; and with Texas Government Code §533.002, which authorizes HHSC to implement the Medicaid managed care program.

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 October 12, 2017.

TRD-201704095

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 1, 2017
Proposal publication date: August 18, 2017
For further information, please call: (512) 424-6863

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CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 12. CERTIFIED REGISTERED NURSE ANESTHETISTS AND ANESTHESIOLOGIST ASSISTANTS

1 TAC §355.8221

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.8221, concerning Reimbursement Methodology. The amendment is adopted with changes to the proposed text as published in the August 4, 2017, issue of the *Texas Register* (42 TexReg 3851).

BACKGROUND AND JUSTIFICATION

Certified registered nurse anesthetists (CRNAs) and anesthesiologist assistants (AAs) are currently reimbursed at the lesser of billed charges or 92 percent of the reimbursement paid to a solo anesthesiologist for supervised services. The amendment to §355.8221 includes language to add anesthesiologist assistants to the reimbursement methodology. Further, the amendment provides that CRNAs and AAs are reimbursed at the lesser of billed charges or 50 percent of the calculated payment when supervised by an anesthesiologist. If a CRNA is supervised by a physician other than an anesthesiologist, HHSC reimburses CRNAs at the lesser of billed charges or 92 percent of the calculated payment.

Amendments to §355.8221 are adopted with changes based on the 2018-19 General Appropriations Act, Senate Bill 1, 85th Legislature, Regular Session, 2017 [Article II, HHSC, Rider 223] that directed HHSC to review and evaluate the reimbursement methodology and payment rates for anesthesiology supervision. Appropriations in this Act are based on a reimbursement methodology and rate that is cost neutral with the reimbursement structure in place in fiscal year 2016. Section 355.8221 was amended in response to comments received to change the effective date to November 1, 2017, and language was added to state that CRNAs will be reimbursed at the lesser of billed charges or 92 percent of the calculated payment when supervised by a physician other than an anesthesiologist.

In order to maintain cost neutrality as indicated in Rider 223, there will be additional adjustments to reimbursement rates which are not covered under this rule.

COMMENTS

The 30-day comment period for the amended rule ended September 5, 2017. During the comment period, HHSC received comments from:

Wilbarger General Hospital

Advance Practice Registered Nurse Alliance

Children's Health System of Texas

Texas Organization of Rural & Community Hospitals (TORCH)

Coalition for Nurses in Advanced Practice

Hereford Regional Medical Center

Gonzales Healthcare Systems

Ward Memorial Hospital

Golden Plains Community Hospital

Moore County Hospital District

Ochiltree Hospital District

Covenant Health

Memorial Medical Center

YPS Anesthesia Services

Brownfield Regional Medical Center

Eastland Memorial Hospital

Texas Academy of Anesthesiologist Assistants

Young Professional Services

Texas Children's Hospital - Baylor College of Medicine

Texas Society of Anesthesiologists

Texas Association of Nurse Anesthetists

Below is a summary of the comments received and HHSC's responses.

Comment: Several commenters raised concerns related to the reduction from 92 percent to 50 percent for CRNA services provided under the supervision of a physician other than an anesthesiologist, where there would be only one payment made to the CRNA at 50 percent of the calculated anesthesia rate without the corresponding 50 percent payment to an anesthesiologist. This would have a significant adverse economic impact on CRNAs, particularly in rural areas where they may be the only available anesthesia provider. Commenters stressed that this would adversely impact access to care for Medicaid patients in rural communities as well.

Response: After review of comments, HHSC revised the rule language and added a section to the rule specifying that CRNA services provided under the supervision of a physician other than an anesthesiologist would be reimbursed at 92 percent of the calculated payment for an anesthesia service. In addition, in a separate initiative, the calculated anesthesia reimbursement rate is proposed to increase, by increasing the conversion factors and set fees, resulting in an overall cost neutral impact for Medicaid anesthesia services.

Comment: Several commenters stated that they can only support the proposed amendments if it includes a significant increase in the base conversion factor for all anesthesia services and an appropriate increase in the methodology for physician anesthesiologists to allow for overall cost neutrality.

Response: HHSC acknowledges this concern and, in a separate initiative, the calculated anesthesia reimbursement rate is proposed to increase, by increasing the conversion factors and set fees, resulting in an overall cost neutral impact for Medicaid anesthesia services. No changes were made in response to this comment.

Comment: Several commenters stated that reducing reimbursement for anesthesia services will significantly impact children's hospitals that provide care for the state's most medically vulnerable children and potentially harm the patients these hospitals serve.

Response: HHSC does not anticipate that this update will significantly impact children's hospitals because the proposed payment methodology is expected to be cost neutral overall. As a result, HHSC does not anticipate a disruption in medical services to Texas patients. No changes were made in response to this comment.

Comment: One commenter suggested that the proposed rate change will adversely affect access to and quality of care for the Medicaid population in Texas through the anesthesia care team model, with specific reference to services provided by AAs. According to the commenter, the Medicaid population is often at a higher risk for complications and includes a significant pediatric population. A reduction in payment could force suboptimal care upon these fragile patients.

Response: HHSC acknowledges the commenter's concerns related to access to care for Medicaid clients but disagrees that it will be affected by the rate change because the proposed payment methodology is anticipated to be cost neutral overall as explained in previous responses. AAs are expected to continue to provide healthcare to the Medicaid population. No changes were made in response to this comment.

Comment: One commenter supports adoption of the proposed amendment because the proposed amendment appropriately recognizes the roles of physician anesthesiologists and other directing physicians in the delivery of anesthesia care to Texas Medicaid patients/clients.

Response: HHSC understands this statement to be a comment in relation to the Anesthesia Care Team model to provide anesthesia services. No changes were made in response to this comment.

STATUTORY AUTHORITY

The rule amendment is adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code, Chapter 32.

§355.8221. Reimbursement Methodology.

(a) Effective for services delivered on and after November 1, 2017, covered anesthesia services provided by a certified registered nurse anesthetist (CRNA) or an anesthesiologist assistant (AA) under the supervision of an anesthesiologist are reimbursed the lesser of the CRNA's or AA's billed charges or 50 percent of the calculated payment for a supervised anesthesia service. For example, if the calculated payment for a supervised anesthesia service is $100, the payment to the CRNA or AA would be $50.

(b) Effective for services delivered on and after November 1, 2017, covered anesthesia services provided by a CRNA under the supervision of a physician, other than an anesthesiologist, are reimbursed at 92 percent of the calculated payment for an anesthesia service.

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 October 10, 2017.

TRD-201704076
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: October 30, 2017
Proposal publication date: August 4, 2017
For further information, please call: (512) 707-6071

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER A. TEXAS COMMODITY REFERENDUM LAW

The Texas Department of Agriculture (Department) adopts the repeal of Title 4, Part 1, Chapter 17, Subchapter A, Texas Commodity Referendum Law, Division 1, General Rules, §§17.1 - 17.10 and §17.12; Division 2, Texas Beef Checkoff Program, §§17.20 - 17.25; Division 3, Texas Grain Producer Indemnity Fund Program, §§17.26 - 17.29. The adoptions are made without changes to the proposal published in the September 8, 2017, issue of the *Texas Register* (42 TexReg 4557).

The repeals are adopted in order to move all subchapters to new Title 4, Part 1, Chapter 23, related to Texas Commodity Law (Chapter 23). New Chapter 23 relocates all current commodity referendum law rules into one location for convenience and accessibility of the public and industry stakeholders.

New Chapter 23 has been proposed for adoption and shall be effective November 5, 2017.

No comments were received on the proposal.

DIVISION 1. GENERAL RULES

4 TAC §§17.1 - 17.10, 17.12

The adoption is made pursuant to Chapter 41 of the Agriculture Code, which provides the Department with the authority to adopt rules to administer its duties related to commodity boards.

The code affected by the adoption is Texas Agriculture Code, Chapter 41.

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 October 16, 2017.

TRD-201704119

Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Effective date: November 5, 2017
Proposal publication date: September 8, 2017
For further information, please call: (512) 463-4075

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DIVISION 2. TEXAS BEEF CHECKOFF PROGRAM

4 TAC §§17.20 - 17.25

The adoption is made pursuant to Chapter 41 of the Agriculture Code, which provides the Department with the authority to adopt rules to administer its duties related to commodity boards.

The code affected by the adoption is Texas Agriculture Code, Chapter 41.

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 October 16, 2017.

TRD-201704120
Jessica Escobar
Assistant General Counsel
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DIVISION 3. TEXAS GRAIN PRODUCER INDEMNITY FUND PROGRAM

4 TAC §§17.26 - 17.29

The adoption is made pursuant to Chapter 41 of the Agriculture Code, which provides the Department with the authority to adopt rules to administer its duties related to commodity boards.

The code affected by the adoption is Texas Agriculture Code, Chapter 41.

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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Assistant General Counsel
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For further information, please call: (512) 463-4075

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CHAPTER 23. TEXAS COMMODITY LAW

The Texas Department of Agriculture (the Department) adopts new Title 4, Part 1, Chapter 23, Texas Commodity Law, Subchapter A, General Provisions, Division 1, General Rules, §23.1; Division 2, Certification of Commodity Organizations, §§23.21 - 23.26; Division 3, Budget Approval and Commodity Assessments, §§23.40 - 23.44; Subchapter B, Texas Beef Promotion and Research Council, §§23.100 - 23.107, without changes. Subchapter C, Texas Grain Producer Indemnity Board, Division 1, General Provisions, §23.200 and §23.201; Division 3, Board Members and Meetings, §§23.230 - 23.234; Division 4, Producer Assessments, §§23.240 - 23.248; Division 5, Claims, §§23.260 - 23.266 are adopted without changes; and Division 2, Elections and Referendum, §23.220 and §23.221; and, Division 6, Appeals and Remedies, §23.280 and §23.281 are adopted with changes. The adoptions were proposed in the September 15, 2017 issue of the *Texas Register* (42 TexReg 4725).

New Chapter 23 relocates Title 4, Part 1, Chapter 17, Subchapter A, Texas Commodity Referendum Law, and Title 4, Part 6, Chapter 90, Texas Grain Producer Indemnity Fund Program Rules, into one location for convenience and accessibility of the public and industry stakeholders. Chapters 17 and 90 were submitted for repeal in the September 8, 2017 issue of the *Texas Register* and shall be adopted by the Department effective November 5, 2017.

A change was made to proposed §23.221 to align the administrative rule with Texas Agriculture Code (Code) §41.212(e), to state that a referendum is approved if passed by majority vote. A non-substantive change is made to new §23.281 to clarify that the Commissioner is the final decision maker regarding licensing actions taken as a result of violations of Subchapter I, Chapter 41 of the Texas Agriculture Code (Code). As a note, House Bill 3952, 85th Regular Legislative Session, added §41.128 to the Code which suspended all activities of the Texas Grain Producer Indemnity Board (Board), and the Board is no longer active.

No comments were received on the proposal. Affected industries were notified of the changes.

SUBCHAPTER A. GENERAL PROVISIONS
DIVISION 1. GENERAL RULES

4 TAC §23.1

The adoption is made pursuant to Chapter 41 of the Agriculture Code, which provides the Department with the authority to adopt rules to administer its duties related to commodity boards.

The code affected by the adoption is Chapter 41 of the Texas Agriculture Code.

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

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For further information, please call: (512) 463-4075

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DIVISION 2. CERTIFICATION OF COMMODITY ORGANIZATIONS

4 TAC §§23.21 - 23.26

The adoption is made pursuant to Chapter 41 of the Agriculture Code, which provides the Department with the authority to adopt rules to administer its duties related to commodity boards.

The code affected by the adoption is Chapter 41 of the Texas Agriculture Code.

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

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DIVISION 3. BUDGET APPROVAL AND COMMODITY ASSESSMENTS

4 TAC §§23.40 - 23.44

The adoption is made pursuant to Chapter 41 of the Agriculture Code, which provides the Department with the authority to adopt rules to administer its duties related to commodity boards.

The code affected by the adoption is Chapter 41 of the Texas Agriculture Code.

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

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For further information, please call: (512) 463-4075

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SUBCHAPTER B. TEXAS BEEF PROMOTION AND RESEARCH COUNCIL

4 TAC §§23.100 - 23.107

The adoption is made pursuant to Chapter 41 of the Agriculture Code, which provides the Department with the authority to adopt rules to administer its duties related to commodity boards.

The code affected by the adoption is Chapter 41 of the Texas Agriculture Code.

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

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For further information, please call: (512) 463-4075

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SUBCHAPTER C. TEXAS GRAIN PRODUCER INDEMNITY BOARD

DIVISION 1. GENERAL PROVISIONS

4 TAC §23.200, §23.201

The adoption is made pursuant to Chapter 41 of the Agriculture Code, which provides the Department with the authority to adopt rules to administer its duties related to commodity boards.

The code affected by the adoption is Chapter 41 of the Texas Agriculture Code.

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

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Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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DIVISION 2. ELECTIONS AND REFERENDUM

4 TAC §23.220, §23.221

The adoption is made pursuant to Chapter 41 of the Agriculture Code, which provides the Department with the authority to adopt rules to administer its duties related to commodity boards.

The code affected by the adoption is Chapter 41 of the Texas Agriculture Code.

§23.220. Voter Eligibility.

A grain producer, as defined in §23.201 of this subchapter (relating to Definitions), who has sold grain to a grain buyer in the 36 months before the date of the referendum is eligible to vote in a referendum conducted under this subchapter.

§23.221. Conduct of Referendum.

(a) The Commissioner shall conduct a referendum as authorized under Chapter 41 of the Code.

(b) Based upon decisions of the Board, the Commissioner shall propose in a referendum:

(1) The maximum assessment to be paid by grain producers; and

(2) The manner in which the assessment will be collected.

(c) Legal notice must be published 90 days prior to the referendum in one or more statewide or regional newspapers that provide reasonable notice throughout the state. In addition, at least 90 days before the date of the referendum, the Department will give direct written notice of the referendum to each Extension office in the state.

(d) Notices required pursuant to subsection (c) of this section shall include:

(1) the date, hours and polling places for voting in the referendum;

(2) the maximum estimated amount of the assessment proposed to be collected, and the basis of collection;

(3) the manner in which the referendum is to be conducted and the proceeds administered and used; and

(4) who to contact for more information.

(e) An eligible grain producer may vote only once in a referendum and each vote is of equal weight, regardless of the grain producer's volume of production.

(f) A referendum is approved if the Commissioner finds that a majority of votes cast are in favor of the referendum.

(g) All voter information, including a producer's vote in a referendum conducted under this section, is confidential and not subject to disclosure under Chapter 552, Texas Government Code.

(h) Ballots must bear the signature and the address of the producer to be valid. A producer's signature on the ballot certifies that the voter sold grain to a grain buyer in the 36 months before the date of the referendum and that the production volume provided on the ballot is accurate.

(i) Ballots for the referendum will be counted in a manner determined by the Commissioner.

(j) A canvassing committee(s) appointed by the Commissioner shall verify the referendum results to the Commissioner for certification.

(k) The Department will be reimbursed by the Board for all costs associated with conducting a referendum under this subchapter.

(l) The referendum will be conducted in-person with ballots submitted by mail to the Department by the grain producer. Ballots will be available to eligible producers at all county Extension offices. Eligible producers may pick up ballots during normal office hours of the county Extension offices during the voting period.

(1) An eligible producer who is unable to access a county Extension office to pick up a ballot may request a mail ballot by contacting Headquarters. No eligible producer requesting a mail ballot who verifies eligibility to vote shall be refused a ballot.

(2) Ballots must be returned to the Department at the address indicated on the ballot, postage prepaid. Ballots not postmarked by midnight on the final day of the voting period will not be counted.

(3) Mail ballots submitted to the Department shall be maintained at Headquarters.

(m) A watcher may be present at Headquarters for the purpose of observing the processing of election results and until members of the canvassing committee complete their duties. Written notice of intent to be present during processing must be submitted to the Department at least three days prior to the count.

(n) After the ballots are counted and the results verified by the Commissioner, the ballots shall be locked in a container and stored at the Headquarters for a period of 30 days. The closed, stored container containing referendum ballots cannot be opened for the 30-day period without a court order or written request for recount. If no contests or investigations arise out of the referendum within 30 days after certification of such referendum, the Commissioner shall destroy the ballots by shredding.

(o) Request for Recount. A request for recount submitted under this subchapter must:

(1) be in writing;

(2) state the grounds for the recount;

(3) be submitted to the Commissioner within 10 calendar days of canvass results; and

(4) be signed by the person requesting the recount or, if there is more than one person, any one or more of them and state each requesting person's name and residence address. If the request is made on behalf of an organization or association, the person submitting the request must state that they are authorized to request a recount on behalf of the organization or association.

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-201704132
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Assistant General Counsel
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For further information, please call: (512) 463-4075

DIVISION 3. BOARD MEMBERS AND MEETINGS

4 TAC §§23.230 - 23.234

The adoption is made pursuant to Chapter 41 of the Agriculture Code, which provides the Department with the authority to adopt rules to administer its duties related to commodity boards.

The code affected by the adoption is Chapter 41 of the Texas Agriculture Code.

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

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Texas Department of Agriculture
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DIVISION 4. PRODUCER ASSESSMENTS

4 TAC §§23.240 - 23.248

The adoption is made pursuant to Chapter 41 of the Agriculture Code, which provides the Department with the authority to adopt rules to administer its duties related to commodity boards.

The code affected by the adoption is Chapter 41 of the Texas Agriculture Code.

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

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DIVISION 5. CLAIMS

4 TAC §§23.260 - 23.266

The adoption is made pursuant to Chapter 41 of the Agriculture Code, which provides the Department with the authority to adopt rules to administer its duties related to commodity boards.

The code affected by the adoption is Chapter 41 of the Texas Agriculture Code.

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DIVISION 6. APPEALS AND REMEDIES

4 TAC §23.280, §23.281

The adoption is made pursuant to Chapter 41 of the Agriculture Code, which provides the Department with the authority to adopt rules to administer its duties related to commodity boards.

The code affected by the adoption is Chapter 41 of the Texas Agriculture Code.

§23.280. Administrative Review.

(a) Filing of request.

(1) Any person who believes they have been aggrieved in connection with a determination made by the Board under division 5 of this subchapter (relating to Claims) may file a request for administrative review by the Department.

(2) A request must be in writing and received by the Department within 90 days after the action of which the person is complaining occurred. Formal requests must comply with the following requirements, and shall be resolved in accordance with the procedure set forth below. Copies of the request and any supporting documentation must be mailed or delivered by the requesting party to the Department and the Board.

(b) Contents of request. A request filed under this section must be sworn and contain:

(1) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;

(2) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in paragraph (1) of this subsection, including an identification of the issue or issues to be resolved;

(3) a precise statement of the relevant facts;

(4) argument and authorities in support of the allegations made;

(5) any supporting documentation available; and

(6) a statement that a copy of the request has been mailed or delivered to the Board.

(c) Informal Review.

(1) Once a request is received by the Department, it shall be forwarded to the Department's Office of General Counsel for review.

(2) The General Counsel, or his or her designee, shall have the authority, prior to appeal to the Commissioner, to settle and resolve the complaint that is the subject of the request, and may solicit additional information regarding the matters alleged in the request for review from the requester, the Board or any other relevant party. Copies of any additional information received shall be provided to both the requester and the Board.

(3) If the issues raised in the request are not resolved by mutual agreement, the General Counsel will issue a written determination on the request for review as follows.

(A) If the General Counsel determines that no violation of rules or statutes has occurred, he or she shall so inform the requesting party and the Board by letter, setting forth the reasons for the determination.

(B) If the General Counsel determines that a violation of the rules or statutes has occurred, he or she shall so inform the requesting party and the Board by letter, setting forth the reasons for the determination and the appropriate remedial action.

(4) If the General Counsel's determination is not appealed, that determination shall serve as the final agency determination on the complaint.

(d) Appeal to Commissioner.

(1) The General Counsel's determination on a complaint may be appealed to the Commissioner by the requester, or his or her designee, or the Board. An appeal of the General Counsel's determination must be in writing and must be received by the Department no later than 15 days after the date of the General Counsel's determination. The appeal shall include specific reasons why the requester or the Board disagrees with the General Counsel's determination. Copies of the appeal must be mailed or delivered by the party appealing to the other party.

(2) The Commissioner, shall review the request, any supporting documentation, the General Counsel's determination, and the appeal and issue a determination on the request. The appeal shall be limited to review of the General Counsel's determination and documentation presented by parties in support of their positions.

(3) The Commissioner's determination of the appeal shall be the final administrative action of the agency and is subject to judicial review under Chapter 2001, Government Code.

(e) Appropriate remedial actions. If the Department, or the Commissioner on appeal, determines that the Board acted in a manner that warrants action by the Department, the Department may prescribe corrective action to be carried out by the Board. The Department is not authorized to award monetary damages to a person filing a request under this section.

§23.281. Penalties and Remedies.

If any grain buyer violates Chapter 41, Subchapter I of the Code by failing to promptly remit assessments, the Commissioner is authorized to suspend, revoke, or deny a Department issued license that the grain buyer may hold, and in any case in which the Commissioner determines, after opportunity for a hearing, that there has been violation of or failure to comply with the Code.

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

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For further information, please call: (512) 463-4075

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PART 6. TEXAS GRAIN PRODUCER INDEMNITY BOARD

CHAPTER 90. TEXAS GRAIN PRODUCER INDEMNITY FUND PROGRAM RULES

The Texas Department of Agriculture (Department), on behalf of the Texas Grain Producer Indemnity Board (Board) adopts the repeal of Title 4, Part 6, Chapter 90, Subchapter A, General Provisions, §90.1; Subchapter B, Board Members, §§90.20 - 90.24; Subchapter C, Producer Assessments, §§90.30 - 90.38 Subchapter D, Claims, §§90.40 - 90.46; Subchapter E, Appeals, Remedies, §90.50 and §90.51. The adoptions are made without changes to the proposal published in the September 8, 2017, issue of the *Texas Register* (42 TexReg 4558).

The repeals are adopted in order to move all subchapters of Title 4, Part 6, Chapter 90 to new Title 4, Part 1, Chapter 23, related to Texas Commodity Law (Chapter 23). New Chapter 23 relocates all current Grain Producer Indemnity Board rules into one location for convenience and accessibility of the public and industry stakeholders. No substantive changes have been made to the rules as currently written in Chapter 90.

New Chapter 23 has been proposed for adoption and shall be effective November 5, 2017.

No comments were received on the proposal.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §90.1

The adoption is made pursuant to Chapter 41 of the Agriculture Code, which provides the Department with the authority to adopt rules to administer its duties related to commodity boards.

The code affected by the adoption is Texas Agriculture Code, Chapter 41.

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

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Jessica Escobar
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For further information, please call: (512) 463-4075

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SUBCHAPTER B. BOARD MEMBERS

4 TAC §§90.20 - 90.24

The adoption is made pursuant to Chapter 41 of the Agriculture Code, which provides the Department with the authority to adopt rules to administer its duties related to commodity boards.

The code affected by the adoption is Texas Agriculture Code, Chapter 41.

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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Assistant General Counsel
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For further information, please call: (512) 463-4075

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SUBCHAPTER C. PRODUCER ASSESSMENTS

4 TAC §§90.30 - 90.38

The adoption is made pursuant to Chapter 41 of the Agriculture Code, which provides the Department with the authority to adopt rules to administer its duties related to commodity boards.

The code affected by the adoption is Texas Agriculture Code, Chapter 41.

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) 463-4075

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SUBCHAPTER D. CLAIMS

4 TAC §§90.40 - 90.46

The adoption is made pursuant to Chapter 41 of the Agriculture Code, which provides the Department with the authority to adopt rules to administer its duties related to commodity boards.

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For further information, please call: (512) 463-4075

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SUBCHAPTER E. APPEALS, REMEDIES

4 TAC §90.50, §90.51

The adoption is made pursuant to Chapter 41 of the Agriculture Code, which provides the Department with the authority to adopt rules to administer its duties related to commodity boards.

The code affected by the adoption is Texas Agriculture Code, Chapter 41.

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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Assistant General Counsel
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For further information, please call: (512) 463-4075

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 24. TEXAS BOOTSTRAP LOAN PROGRAM RULE

10 TAC §§24.1 - 24.3, 24.5, 24.6, 24.8 - 24.13

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 24 Texas Bootstrap Loan Program Rule, §24.1, Purpose; §24.2, Definitions; §24.3, Allocation of Funds; §24.5, Program Activities; §24.6, Prohibited Activities; §24.8, Criteria for Funding; §24.10, Owner-Builder Qualifications; §24.11, Types of Funding Transactions; §24.12, Property Guidelines and Related Issues; and §24.13, Nonprofit Owner-Builder Housing Program Certification, without changes to the text as published in the August 11, 2017, issue of the *Texas Register* (42 TexReg 3927). Section 24.9, Program Administration, is adopted with changes to the proposed text and is published below.

REASONED JUSTIFICATION. The purpose of amending the Texas Bootstrap Loan Program Rule is to integrate changes made by the 85th Texas Legislature via House Bill 1512, add missing definitions, correct capitalization, simplify wording, and eliminate duplication of underwriting rules already stated in the Single Family Programs Umbrella Rule 10 TAC Chapter 20.

SUMMARY OF PUBLIC COMMENTS AND STAFF RECOMMENDATIONS. The Department accepted public comments between August 11, 2017, and September 11, 2017, and no public comments were received. Staff recommends the adoption of the amended rules as published in the August 11, 2017, issue of the *Texas Register.*

STATUTORY AUTHORITY. The amendments are adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules and §2306.752, which requires the Department to establish, operate, monitor and fund an Owner-Builder Loan Program to enable Owner-Builders to purchase or refinance real property on which to build new residential housing or improve existing residential housing.

The adopted amendments affect no other code, article, or statute.

§24.9. Program Administration.

(a) Pursuant to §2306.754(b), the Department shall not exceed $45,000 in household assistance for any Texas Bootstrap Loan Program loan. If it is not possible for an Owner-Builder to purchase necessary real property and build or rehabilitate adequate housing for $45,000, the Owner-Builder must obtain the additional amounts necessary from other sources, which may include other types of Department funds with the exception of other State Housing Trust Funds.

(b) The Department shall make loans for Owner-Builder applicants to enable them to:

(1) purchase or refinance real property on which to build new residential housing;

(2) build new residential housing; or

(3) improve existing residential housing.

(c) Upon approval by the Department, the Participant shall enter into, execute, and deliver to the Department the Loan Origination Agreement. The Department may terminate the Loan Origination Agreement in whole or in part if the Participant has not performed as outlined in the Program Rule, NOFA, Loan Origination Agreement, and/or Program Manual.

(d) In the event the Department has additional funds in the same funding cycle, the Department, with Board approval, will distribute funds in accordance with this chapter.

(e) If the Owner-Builder Applicant qualifies for the Program, the Department will issue an Applicant eligibility letter which reserves up to $45,000 in funds for twelve (12) months from the date of the Applicant eligibility letter. Owner-Builder Applicant will not be required to re-qualify if the Owner-Builder Applicant closes by the expiration date on the Applicant eligibility. Otherwise, the Owner-Builder Applicant must re-qualify for the Program and the Department may grant an extension of up to 90 days from the expiration date on the original Applicant eligibility letter. If the Owner-Builder Applicants fails to close on the loan after the extension is granted the Reservation and/or loan will be cancelled.

(f) Roles and responsibilities for administering the Program Contract. Participants are required to:

(1) qualify potential Owner-Builders for loans;

(2) provide Owner-Builder homeownership education classes;

(3) supervise and assist Owner-Builders to build and/or Rehabilitate housing;

(4) facilitate loans made or purchased by the Department under the Program; and

(5) implement and administer the Program on behalf of the Department.

(g) Loan Servicing Agreement. If the Participant wishes to service the loans originated on behalf of the Department it must obtain prior approval and enter into a Loan Servicing Agreement with the Department.

(h) First Year Consultation Agreement. The Participant agrees that if notified by the Department that Owner-Builder has failed to make a scheduled payment due under the Program loan, or other payments due under the Program loan documents, within the first twelve (12) months of funding, the Participant will be required to meet with the Owner-Builder and provide counseling and assistance until the payments are made current. After consultation and in the event that the Department and Participant are not able to bring the Program loan current as required under this chapter, the Department in accordance with its administrative rules may apply appropriate graduated sanctions leading up to, but not limited to, deobligation of funds and future debarment from participation in the Program.

(i) Administrative Fee. The Participant will be granted a 10 percent administration fee upon completion of the house and funding of each Mortgage loan.

(j) Blueprints. If Participant's activity is interim or residential construction, Participant must provide an original copy of the proposed blueprints to be approved by the Department prior to accepting applications. Blueprints must include the required construction requirements pursuant to Texas Government Code, §2306.514, and be prepared and executed by an architect or engineer licensed by the state of Texas.

(k) Work Write-up. If Participant's activity is rehabilitation, Participant must submit work write-ups and cost estimations for Department approval prior to construction.

(l) Loan Program requirements. The Department may purchase or originate loans that conform to the lending parameters and the specific loan Program requirements as described in paragraphs (1) - (7) of this subsection:

(1) maximum Texas Bootstrap Loan Program loan amount shall not exceed $45,000. If it is not possible for an Owner-Builder to purchase necessary real property and build or rehabilitate adequate housing for $45,000, the Owner-Builder must obtain the additional amounts necessary from other sources, which may include other types of Department funds with the exception of other State Housing Trust Funds.

(2) minimum Loan amount is $1,000;

(3) may not exceed a term of thirty (30) years;

(4) minimum loan term of five (5) years;

(5) zero (0) percent non-interest loans;

(6) when refinancing a Contract for Deed, the Department will not disburse any portion of the Department's loan until the Owner-Builder receives a deed to the property;

(7) Owner-Builder must have resided in Texas for the preceding six (6) months prior to the date of loan application.

(m) Loan Assumption. A Program loan is assumable if the Department determines that the Owner-Builder Applicant complies with all Program requirements in effect at the time of the assumption.

(n) Forgivable Loan. The term for a Forgivable Loan may not exceed 15 years from the date of closing.

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-201704144
Beau Eccles
General Counsel
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-4828

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CHAPTER 26. TEXAS HOUSING TRUST FUND RULE

10 TAC §§26.1 - 26.7

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule. The rule is adopted for repeal in connection with the adoption of new 10 TAC Chapter 26, Texas Trust Fund Rule, which was published concurrently in the August 11, 2017, issue of the *Texas Register* (42 TexReg 3943).

REASONED JUSTIFICATION. The repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule, will allow for the concurrent adoption of new 10 TAC Chapter 26, Texas Housing Trust Fund Rule.

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

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.

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Beau Eccles
General Counsel
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-4828

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CHAPTER 26. TEXAS HOUSING TRUST FUND RULE

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 26, Texas Housing Trust Fund Rule. These new rules are being adopted concurrently with the repeal of existing 10 TAC Chapter 26, Texas Housing Trust Fund Rule, with changes being made in response to public comments to the proposed text as published in the August 11, 2017, issue of the *Texas Register* (42 TexReg 3944).

REASONED JUSTIFICATION. The new rules update and clarify applicability of the Rule to the Texas Bootstrap Loan Program and the Amy Young Barrier Removal Program; improve readability through the re-ordering of phrases and sections; remove frequent references to Notices of Funding Availability and Program Manuals; and further delineate program guidelines for the Amy Young Barrier Removal Program with regard to purpose, definitions, geographic dispersion of funds, administrative requirements, reservation system requirements, household eligibility, property eligibility, construction requirements and project completion requirements.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. The public comment period was from August 11, 2017, through September 11, 2017. Comments were accepted in writing and via email, with comments received from: (1) Robb Stevenson of Equity Community Development Corporation, (2) Luis Chavez of Fort Bend Community Revitalization Projects, (3) Charles Cloutman of Meals on Wheels Central Texas, and (4) Raimund Gideon of Habitat for Humanity of Smith County.

§26.22. AMY YOUNG BARRIER REMOVAL PROGRAM GEOGRAPHIC DISPERSION.

COMMENT SUMMARY: Commenter 4 stated that 90 days is too lengthy a period for each geographic category to access funds (rural and urban subregions first, then state region second, then concluding with one state-wide pool). Commenter 4 suggested a shorter time frame for prompt completion of projects and time in between funding years to identify new clients.

STAFF RESPONSE: Ninety days is the estimated amount of time needed for an eligible entity to submit an application to become an Administrator, conduct marketing and application intake, and ultimately access funds. Releasing funding in phases, with ample time to conduct program activities, promotes geographic dispersion of program funds to places that are historically underserved by the program. No changes to this section of the rule will be made in response to this comment.

§26.25(c) AMY YOUNG BARRIER REMOVAL PROGRAM HOUSEHOLD ELIGIBILITY REQUREMENTS.

COMMENT SUMMARY: Commenter 1 suggested that when calculating a program participant's liquid assets, the full appraised value of real property that is not a principal residence be excluded from the calculation.

STAFF RESPONSE: Utilizing the local appraisal district's market value for any real property that is not a principal residence is the simplest method to account for liquid assets. This method can be consistently applied across the state and treats assisted households equally. No changes to this section of the rule will be made in response to this comment.

§26.26(a) AMY YOUNG BARRIER REMOVAL PROGRAM PROPERTY ELIGIBILITY REQUREMENTS.

COMMENT SUMMARY: Commenter 4 suggested clarification of eligibility of property in which the owner of record is deceased but heirs reside on the property.

STAFF RESPONSE: Staff agrees and has revised an adjacent section, §26.26(b)(3), accordingly. The new rule (revision in italics) is "(3) If the property is family-owned but the owner of record

is not a Household member (or is deceased), the Department may consider it a renter-occupied unit *on a case by case basis."*

§26.26(b)(1) AMY YOUNG BARRIER REMOVAL PROGRAM PROPERTY ELIGIBILITY REQUREMENTS.

COMMENT SUMMARY: Commenter 1 stated that, in the case of renting households, it is problematic to require that all household members be listed on the lease because lease formats can vary.

STAFF RESPONSE: Staff agrees and has revised §26.26(b)(1) accordingly. The new rule (revision in italics) states "(1) In rental units, all Household occupants, including the Person with Disability, must be named on the intake application and Household Income Certification."

§26.27(c)(2) Amy Young Barrier Removal Program Construction Requirements.

COMMENT SUMMARY: Commenter 4 suggested that accessibility modifications be made with consideration of the design standards established by the 2012 Texas Accessibility Standards instead of the 2010 standards under the of the American with Disabilities Act.

STAFF RESPONSE: Using the 2010 Standards for Accessible Design of the American with Disabilities Act as a guideline for the design of Amy Young Barrier Removal Program projects allows for a more uniform way of establishing standards and implementation across the State. The Texas Accessibility Standards are only equivalent for compliance with Title III of the ADA while 2010 ADA complies with Title II. No changes to this section of the rule will be made in response to this comment.

§26.27(d)(3) Amy Young Barrier Removal Program Construction Requirements.

COMMENT SUMMARY: Commenter 1, Commenter 2, and Commenter 4 suggested clarification or elimination of the phrase "inadequate, faulty or damaged systems".

STAFF RESPONSE: Staff agrees and has revised §26.27(d)(3) accordingly. The new rule (revision in italics) is "(3) Because of the essential nature of the elimination of certain life-threatening hazards, the percentage of Project Hard Costs budget devoted to eliminating life-threatening hazards and correcting unsafe conditions in the housing unit may exceed 25% if the work write-up and cost estimation includes the correction *of inadequate, faulty, damaged or absent:* emergency escape, rescue openings and fire egress; ground fault circuit interrupters (GFCI); arc fault circuit interrupters (AFCI); and smoke, fire and carbon monoxide detection/alarm systems. The combination of the correction of these certain life-threatening hazards with the correction of any other unsafe conditions cannot exceed 40% of Project Hard Costs budget."

§26.27(d)(4) Amy Young Barrier Removal Program Construction Requirements.

COMMENT SUMMARY: Commenter 3 stated that requiring properties to be completely free of unsafe conditions upon project completion limits the feasibility of the program in rural areas, where leveraged funding opportunities are scarce. Commenter 3 stated that such a requirement merits increasing the maximum program grant amount per household.

STAFF RESPONSE: The primary purpose of the program is to increase housing accessibility, and the secondary purpose is to address health and safety repairs (the budget for which is limited to 25% of the total Project Hard Costs budget). Other funding sources should be utilized to address life-threatening hazards and unsafe conditions if these repairs exceed limitations under the AYBR program. No changes to this section of the rule will be made in response to this comment.

SUBCHAPTER A. GENERAL GUIDANCE

10 TAC §§26.1 - 26.6

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

The new rules affect no other code, article or statute.

§26.1. Purpose.

This chapter clarifies the administration of the Texas Housing Trust Fund Program (HTF). The HTF provides loans, grants or other comparable forms of assistance to income-eligible individuals, families and households. The HTF is administered in accordance with Texas Government Code, Chapter 2306, Chapter 20 of this Title (relating to Single Family Programs Umbrella Rule), and Chapter 24 of this Title (relating to Texas Bootstrap Loan Program Rule).

§26.2. Definitions.

Definitions may be found in Texas Government Code, Chapter 2306; Chapter 1 of this Title (relating to Administration), Chapter 2 of this Title relating to Enforcement; Chapter 20 of this Title (relating to Single Family Programs Umbrella Rule); Chapter 21 of this Title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 24 of this Title (relating to Texas Bootstrap Loan Program Rule), unless the context or the Notice of Funding Availability (NOFA) indicates otherwise.

§26.3. Allocation of Funds.

(a) The Department administers all HTF funds provided to the Department in accordance with Texas Government Code, Chapter 2306. The Department may solicit gifts and grants to endow the fund.

(b) Pursuant to Texas Government Code, §2306.202(b), use of the HTF is limited to providing:

(1) assistance for individuals and families of low and very low income;

(2) technical assistance and capacity building to nonprofit organizations engaged in developing housing for individuals and families of low and very low income;

(3) security for repayment of revenue bonds issued to finance housing for individuals and families of low and very low income; and

(4) subject to the limitations in Texas Government Code, §2306.251, the Department may also use the fund to acquire property to endow the fund.

(c) Set-Asides. In accordance with Texas Government Code, §2306.202(a) and program guidelines:

(1) in each biennium, the first $2.6 million available through the HTF for loans, grants, or other comparable forms of assistance shall be set aside and made available exclusively for Local Units of Government, Public Housing Authorities, and Nonprofit Organizations;

(2) any additional funds may also be made available to for-profit organizations provided that at least 45 percent of available funds, as determined on September 1 of each state fiscal year, in excess of the first $2.6 million shall be made available to Nonprofit Organizations; and

(3) the remaining portion shall be distributed to Nonprofit Organizations, for-profit organizations, and other eligible entities, pursuant to Texas Government Code, §2306.202.

§26.4. Use of Funds.

(a) Use of additional or Deobligated Funds. In the event the Department receives additional funds, such as loan repayments, donations and interest earnings, the Department will redistribute the funds in accordance with the HTF plan in effect at the time the additional funds become available.

(b) Reprogramming of Funds. If funding for a program is undersubscribed or funds not utilized, within a timeframe as determined by the Department, remaining funds may be reprogrammed at the discretion of the Department consistent with the HTF plan in effect at the time.

§26.5. Prohibited Activities.

(a) Persons receiving or benefiting from HTF funds, as determined by the Department, may not be currently in delinquency or in default with child support and/or government loans.

(b) The activities described in paragraphs (1) - (7) of this subsection are prohibited in relation to the origination of a HTF loan, but may be charged as an allowable cost by a third (3rd) party lender for the origination of all other loans originated in connection with an HTF loan:

(1) payment of delinquent property taxes or related fees or charges on properties to be assisted with HTF funds;

(2) loan origination fees;

(3) application fees;

(4) discount fees;

(5) underwriter fees;

(6) loan processing fees; and

(7) other fees not approved by the Department in writing prior to expenditure.

§26.6. Administrator Eligibility and Requirements.

Administrator must enter into an agreement with the Department in order to be eligible to access the Housing Trust Fund.

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

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SUBCHAPTER B. AMY YOUNG BARRIER REMOVAL PROGRAM

10 TAC §§26.20 - 26.28

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

The new rules affect no other code, article or statute.

§26.20. Amy Young Barrier Removal Program Purpose.

The Amy Young Barrier Removal Program (the "Program" or "AYBRP") provides one-time grants of up to $20,000 in combined Hard and Soft Costs to Persons with Disabilities in a Household qualified as Low-Income. Grants are for home modifications that increase accessibility, eliminate life-threatening hazards and correct unsafe conditions.

§26.21. Amy Young Barrier Removal Program Definitions.

The following words and terms used in this Subchapter shall have the following meanings, unless the context clearly indicates otherwise. Other definitions are found in Texas Government Code, Chapter 2306, Chapter 1 of this Title (relating to Administration), Chapter 2 of this Title (relating to Enforcement), Chapter 20 of this Title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this Title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 26, Subchapter A of this Title (relating to Housing Trust Fund).

(1) Administration Fee--Funds equal to 10% of the Project Costs (combined Hard and Soft Costs) paid to an Administrator upon completion of a project.

(2) Hard Costs--Site-specific costs incurred during construction, including but not limited to: general requirements, building permits, jobsite toilet rental, dumpster fees, site preparation, demolition, construction materials, labor, installation equipment expenses, etc.

(3) Low-Income--Household income does not exceed the greater of 80% of the Area Median Family Income or 80% of the Statewide Income Limits, adjusted for Household size, in accordance with the current HOME Investment Partnerships Program income limits as defined by HUD.

(4) Project Costs--Program funds (combined Hard and Soft Costs) that directly assist a Household.

(5) Qualified Inspector--Certified by the Administrator that the individual has professional certifications, relevant education or a minimum of five (5) years experience in a field directly related to home inspection, including but not limited to installing, servicing, repairing or maintaining the structural, mechanical, plumbing and electrical systems found in Single Family Housing Units, as evidenced by inspection logs, certifications, training courses or other documentation.

(6) Reservation Agreement--A written Agreement including all amendments thereto between the Department and Administrator that authorizes the Administrator to reserve funds under the AYBRP.

(7) Soft Costs--Costs related to and identified with a specific Single Family Housing Unit other than construction costs, per Texas Administrative Code, Title 10, Part 1, Single Family Umbrella Rule §20.3.

§26.22. Amy Young Barrier Removal Program Geographic Dispersion.

(a) The process to promote geographic dispersion of program funds is as follows:

(1) For the first 90 days of the initial release of funds, each state region will receive funding amounts for their rural and urban subregions. For 90 days, these funds may be reserved only for Households located in these rural and urban subregions.

(2) For the next 90 days following the initial 90 days after the release date, any funds remaining in the rural and urban subregions will be combined into one balance for that state region. For 90 days, these funds may be reserved only for Households located in that state region.

(3) After the initial 180 days following the release date, any funds remaining across all state regions will collapse into one statewide pool. For as long as funds are available, these funds may be reserved for any Households anywhere in the state on a first-come, first-served basis.

(b) If any additional funds beyond the original program allocations that derive from HTF loan repayments, interest earnings, deobligations, and other HTF funds in excess of those funds required under Rider 8 may be placed directly into the state-wide pool for reservation.

§26.23. Amy Young Barrier Removal Program Administrative Requirements.

(a) To participate in the Program, an eligible participant must first be approved as an Administrator by the Department by the submission of a Reservation System Access Application. Eligible participants include Colonia Self-Help Centers established under Texas Government Code, Chapter 2306, Subchapter Z; Councils of Government; Units of Local Government; Nonprofit Organizations; Local Mental Health Authorities and Public Housing Authorities.

(b) The Administrator must enter into a Reservation Agreement ("Agreement") with the Department in order to be eligible to reserve funds for the Amy Young Barrier Removal Program.

(1) The Applicant submit a current letter of determination from the Internal Revenue Service (IRS) under §501(c)(3), a charitable, nonprofit corporation, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on throughout the agreement period to access the Reservation System.

(2) The Applicant must be registered and in good standing with the Office of the Secretary of State and the State Comptroller's Office to do business in the state of Texas.

(3) The Applicant must have the capacity and experience demonstrating at least two years experience in housing rehabilitation in Texas. Summary of experience will describe the capacity of key staff members and their skills and experience in client intake, records management, and managing housing rehabilitation. It will also describe organizational knowledge and experience in serving Persons with Disabilities.

(4) The Applicant must evidence of financial accountability standards, demonstrated by certification from a Certified Public Accountant and an audited financial statement from the most recent fiscal year, or a current dated and signed financial statement for the period since last audit produced. For Nonprofit Organizations that do not yet have audited financial statements, the Department may accept a resolution from the Board of Directors that is signed and dated within the six months preceding the application and that certifies that the accounting procedures used by the organization conform to Generally Accepted Accounting Principles (GAAP) and the Financial Accounting Standards Board (FASB), "Financial Statements of Not-For-Profit Organizations".

(5) Applicants who have previously received any TDHCA funding must be in compliance with all active Contracts and Agreements.

(6) An Applicant must submit a current roster of all Board of Directors, including names and mailing addresses.

(7) The Applicant must submit a resolution from the Board of Directors, Council, or Commissioners that is signed and dated within the six months preceding the application. The resolution must state that the board, council or commissioners have approved the Applicant to access the Reservation System for TDHCA's Amy Young Barrier Removal Program; and the name and title of the individual authorized to execute a written Reservation System Access Agreement.

(8) The Applicant must submit any past due Single Audit to the Department in a satisfactory format on or before the Application deadline.

(9) The Applicant's compliance history will be evaluated in accordance with 10 TAC Chapter 1, Subchapter 1, §1.302, relating to Previous Participation Reviews for Department Program Awards. Access to funds may be subject to terms and conditions.

(10) If applicable, the Applicant must submit copies of executed contracts with consultants or other organizations that are assisting in the implementation of the applicant's AYBRP activities. They must include a summary of the consultant or other organization's experience in housing rehabilitation and/or serving Persons with Disabilities.

(c) Administrators must follow the processes and procedures as required by the Department through its governing statute (Chapter 2306 of the Government Code), Administrative Rules (Texas Administrative Code, Title 10, Part 1), Reservation Agreement, Program Manual, forms, and NOFA.

§26.24. Amy Young Barrier Removal Program Reservation System Requirements.

(a) An Administrator is ineligible to access the online Reservation System until any past due audits or Department audit certification forms have been submitted to the Department in a satisfactory format.

(b) Reservation Setups will be processed in the order submitted on the Reservation System. Submission of a Reservation Setup consisting of support documentation on behalf of a Household does not guarantee funding.

(c) If the Reservation is incomplete and missing any of the required forms as prescribed by the current setup instructions, it will be set back to "pending" status and funds will be released and available for reservation.

(d) If support documentation needs correction or additional information, the Department will notify the Administrator of the deficiencies. If any deficiencies remain uncured within ten calendar days after notification, the Department may cancel the reservation.

(e) If a Household is eligible for assistance, the Department will reserve up to the maximum of $20,000 in Project Costs and an Administration Fee equal to 10% of the combined Hard and Soft costs in the Housing Contract System on behalf of the Household.

§26.25. Amy Young Barrier Removal Program Household Eligibility Requirements.

(a) At least one Household member shall meet the definition of Persons with Disabilities.

(b) The assisted Household shall not have Household income that exceeds 80% of Area Median Family Income.

(c) The assisted Household's liquid assets shall not exceed $20,000. Liquid assets are considered to be cash deposited in checking or savings accounts, money markets, certificates of deposit, mutual funds or brokerage accounts; the net value of stocks or bonds that may be easily converted to cash; and the appraisal district's market value for any real property that is not a principal residence. Funds

in tax-deferred accounts for retirement or education savings (e.g., Individual Retirement Accounts, 401Ks, 529 plans) are excluded from the liquid assets calculation.

(d) The Household may be ineligible for the program if there is debt owed to the State of Texas, including a tax delinquency; a child support delinquency; a student loan default; or any other delinquent debt owed to the State of Texas.

§26.26. Amy Young Barrier Removal Program Property Eligibility Requirements.

(a) Owner-occupied homes are eligible for Program assistance.

(1) In owner-occupied homes, the owner of record must reside in the home as their permanent residence unless otherwise approved by the Department.

(2) Real property taxes assessed on an owner-occupied Single Family Housing Unit must be current (including prior years). Alternatively, the Household must be satisfactorily participating in an approved payment plan with the taxing authority and must be current for at least six consecutive months prior to the date of Application, or, must have qualified for an approved tax deferral plan, or has received a valid exemption from real property taxes.

(b) Certain rental units are eligible for Program assistance.

(1) In rental units, all Household occupants, including the Person with Disability, must be named on the intake application and Household Income Certification.

(2) If the owner of record does not live in the subject property with the Person with Disability, the Department may consider it a renter-occupied unit.

(3) If the property is family-owned but the owner of record is not a Household member (or is deceased), the Department may consider it a renter-occupied unit on a case by case basis.

(4) The following rental properties are ineligible for Program assistance:

(A) Property that is or has been developed, owned, or managed by that Administrator or an Affiliate;

(B) Rental units in properties that are financed with any federal funds or that are subject to 10 TAC Chapter 1, Subchapter B, §1.206 relating to Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973.

(C) Rental units that have life-threatening hazards or unsafe conditions identified in the initial inspection. Program funds may not be used to correct hazardous or unsafe conditions in rental units, but may be used for accessibility modifications only after the life-threatening hazards and unsafe conditions have been corrected by the property owner at the property owner's expense.

(D) Rental units owned by a property owner who is delinquent on property taxes associated with the property occupied by the Household.

§26.27. Amy Young Barrier Removal Program Construction Requirements.

(a) Inspections.

(1) Initial inspection is required and must identify the accessibility modifications needed by the Person with Disability; assess and document the condition of the property; and identify all deficiencies that constitute life-threatening hazards and unsafe conditions.

(2) Final inspection is required and must verify, assess and document that all construction activities have been repaired, replaced and/or installed in a professional manner consistent with all applicable building codes and Program requirements.

(3) Initial and final inspections must be completed by a Qualified Inspector.

(4) All On-Site Sewage Facilities (OSSF or septic system) shall be inspected by a Texas Commission on Environmental Quality authorized agent to determine if the system is in substantial compliance with Health & Safety Code, Chapter 366, and the rules adopted under that chapter, unless waived by the Department on a case-by-case basis.

(b) A Manufactured Housing Unit may be eligible for Program assistance if it was constructed on or after January 1, 1995.

(c) Construction standards.

(1) Administrators must follow all applicable sections of their local building codes and ordinances, pursuant to Section 214.212 of the Local Government Code. Where local codes do not exist, the 2015 International Residential Code (IRC), including Appendix J for Existing Buildings and Structures, is the applicable code for the Program.

(2) Accessibility modifications shall be made with consideration of the design standards established by the 2010 ADA Standards. Any variation from 2010 ADA Standards must be documented as necessary to meet the disability related needs of the Person with a Disability.

(3) Administrators must adhere to Chapter 21 of this Title, relating to "Minimum Energy Efficiency Requirements for Single Family Construction Activities."

(d) Life-threatening hazards and unsafe conditions.

(1) Administrators may make repairs to eliminate life-threatening hazards and correct unsafe conditions in the housing unit as long as no more than 25% of the Project Hard Costs budget is utilized for this purpose, unless otherwise approved by the Department.

(2) Life-threatening hazards and unsafe conditions include, but are not limited to: faulty or damaged electrical systems; faulty or damaged gas-fueled systems; faulty or damaged heating and cooling systems or the absence of adequate heating and cooling system; faulty or damaged plumbing systems, including sanitary sewer systems; faulty or damaged smoke, fire and carbon monoxide detection/alarm systems or the absence of these systems; structural systems on the verge of collapse or failure; environmental hazards such as mold, lead-based paint, asbestos or radon; serious pest infestation; absence of adequate emergency escape and rescue openings and fire egress; and the absence of ground fault circuit interrupters (GFCI) and arc fault circuit interrupters (AFCI) in applicable locations.

(3) Because of the essential nature of the elimination of certain life-threatening hazards, the percentage of Project Hard Costs budget devoted to eliminate life-threatening hazards and correct unsafe conditions in the housing unit may exceed 25% if the work write-up and cost estimation includes the correction of inadequate, faulty, damaged or absent: emergency escape, rescue openings and fire egress; ground fault circuit interrupters (GFCI); arc fault circuit interrupters (AFCI); and smoke, fire and carbon monoxide detection/alarm systems. The combination of the correction of these certain life-threatening hazards with the correction of any other unsafe conditions cannot exceed 40% of Project Hard Costs budget.

(4) All areas and components of the housing must be free of life-threatening hazards and unsafe conditions at project completion.

(e) Work-Write Ups. The Department shall review work-write ups (also referred to as "scope of work") and cost estimates prior to the Administrator soliciting bids.

(f) Bids. The Department shall review all line item bids Administrators select for award prior to the commencement of construction. Lump sum bids will not be accepted.

(g) Change orders. Administrators seeking change orders must obtain written Department approval prior to the commencement of any work related to the proposed change. Failure to get prior Departmental approval may result in disallowed costs.

§26.28. Amy Young Barrier Removal Program Project Completion Requirements.

(a) The Administrator has ninety calendar days to complete all construction activities and submit the Project and Administrative draw request, with required supporting documentation, in the Housing Contract System for reimbursement by the Department. The Department may grant a one-time, 30-calendar day extension to the Project completion deadline due to extenuating circumstances that were beyond the Administrator's control.

(b) The Department will reimburse the Administrator in one, single payment after the Administrator's successful submission of the Project and Administrative draw request per Department instructions. Interim draws will not be permitted. The Department reserves the right to delay draw approval in the event that the Household expresses dissatisfaction with the work completed in order to resolve any outstanding conflicts between the Household and/or the Administrators and their subcontractors.

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 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 8. PIPELINE SAFETY REGULATIONS

SUBCHAPTER A. GENERAL REQUIREMENTS AND DEFINITIONS

16 TAC §8.1

The Railroad Commission of Texas (Commission) adopts an amendment to §8.1, relating to General Applicability and Standards, to update federal provisions and citations. The Commission adopts the amendment without change from the proposed text as published in the September 1, 2017, issue of the *Texas Register* (42 TexReg 4397).

The Commission adopts the amendment in §8.1(b) to update the minimum safety standards and to adopt by reference the United States Department of Transportation's (DOT) pipeline safety standards found in 49 U.S.C. §§60101, et seq.; 49 Code of Federal Regulations (CFR) Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 49 CFR Part 193, Liquefied Natural Gas Facilities: Federal Safety Standards; 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline; 49 CFR Part 199, Drug and Alcohol Testing; and 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs. The rule adopted the federal pipeline safety standards as of October 4, 2014; the newly adopted amendment amends the date to October 30, 2017. The federal safety rule amendments that will be captured are summarized in the following paragraphs.

Docket PHMSA-2011-0337, published at 80 Fed. Reg. 165, amended 49 CFR Parts 192, 193, 195, and 199 to incorporate by reference new, updated, or reaffirmed editions of the voluntary consensus technical standards. This action allows pipeline operators to use current technologies, improved materials, and updated industry and management practices. The amendment did not require pipeline operators to take on any significant new pipeline safety initiatives. The final rule was effective March 6, 2015. PHMSA later published a correction to Docket PHMSA-2011-0337 at 80 Fed. Reg. 46847. The original document inadvertently removed paragraphs (b)(1) through (b)(4) in 49 CFR 192.153; incorrectly listed a cross-reference in §193.2321(b)(1); incorrectly formatted the word "see" in various sections, and specified an incorrect authority in Part 193. The correcting amendments were effective August 6, 2015.

Docket PHMSA-2010-0026, published at 80 Fed. Reg. 12762, amended 49 CFR Parts 191, 192, and 195 to make miscellaneous updates regarding performance of post-construction inspections, leak surveys of Type B onshore gas gathering lines, qualifying plastic pipe joiners, regulation of ethanol, transportation of pipe, filing of offshore pipeline condition reports, and calculation of pressure reductions for hazardous liquid pipeline anomalies. The final rule was effective October 1, 2015. However, on September 30, 2015, PHMSA published at 80 Fed. Reg. 58633 a response to petitions for reconsideration, which delayed the effective date indefinitely for amendments to 49 CFR 192.305, relating to responsibility to conduct construction inspections. As of the date of this rulemaking, PHMSA has not announced a new effective date for the amendments to §192.305. Therefore, those amendments are not incorporated into §8.1.

Docket DOT-2016-18328, published at 81 Fed. Reg. 52364, amended 49 CFR Part 40 to conform Department of Transportation (DOT) drug and alcohol testing regulations to legislation that changed the definition of "service agent." The new definition of "service agent" includes all entities that provide services for DOT mandated drug and alcohol programs. The final rule was effective August 8, 2016.

Docket PHMSA-2013-0163, published at 82 Fed. Reg. 7972, amended 49 CFR Parts 191, 192, 195, and 199, to address requirements of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011. Specifically, PHMSA added a time

frame for telephonic or electronic notifications of accidents and incidents and added provisions setting up cost recovery for design reviews of certain new projects, providing a renewal procedure for expiring special permits, and setting out the process for requiring protection of confidential commercial information. PHMSA also amended the drug and alcohol testing requirements and incorporated consensus standards by reference for in-line inspection (ILI) and Stress Corrosion Cracking Direct Assessment (SCCDA). The final rule was effective March 24, 2017.

Docket PHMSA-2011-0009, published at 81 Fed. Reg. 70987, amended 49 CFR Part 192 to require an excess flow valve (EFV) on new or replaced branched service lines servicing single-family residences, multifamily residences, and small commercial entities consuming gas volumes not exceeding 1,000 Standard Cubic Feet per Hour (SCFH). PHMSA also changed Part 192 to require manual service line shut-off valves or EFVs, if appropriate, for new or replaced service lines with meter capacities exceeding 1,000 SCFH. Finally, the rule required operators to notify customers of their right to request installation of an EFV on service lines that are not being newly installed or replaced. The final rule was effective April 14, 2017.

The Commission received no comments on the proposed amendment.

The Commission adopts the amendment under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §§117.001-117.101, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. Section 60101, et seq.; and Texas Utilities Code, §§121.201-121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, et seq.

Statutory authority: Texas Natural Resources Code, §81.051, §81.052, and §§117.001-117.101; Texas Utilities Code, §§121.201-121.211; §121.251 and §121.253, §§121.5005-121.507; and 49 United States Code Annotated, §§60101, et seq.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas, on October 10, 2017.

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 33. STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND

SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §33.1001

The Texas Education Agency adopts an amendment to §33.1001, concerning payments for remittance to the Charter District Bond Guarantee Reserve Fund. The amendment is adopted with changes to the proposed text as published in the August 25, 2017 issue of the *Texas Register* (42 TexReg 4220). The adopted amendment changes the timing and amount of payment by charter holders to the Charter District Bond Guarantee Reserve Fund (Reserve Fund) established under the Texas Education Code (TEC), §45.0571, as amended by Senate Bill (SB) 1480, 85th Texas Legislature, Regular Session, 2017.

REASONED JUSTIFICATION. TEC, §45.0571, authorizes the commissioner to establish rules related to the Charter District Bond Guarantee Reserve Fund. The statute, as amended by SB 1480, 85th Texas Legislature, Regular Session, 2017, provides that a charter district that has a bond guaranteed as provided by TEC, Chapter 45, Subchapter C, must remit to the commissioner, for deposit in the Reserve Fund, an amount equal to 20% of the savings to the charter district resulting from the lower interest rate on the bond due to the guarantee by the permanent school fund.

The adopted amendment adds new subsection (c) applicable to charter district bonds guaranteed under 19 TAC §33.67, Bond Guarantee Program for Charter Schools, that receive final approval from the commissioner of education in the form of the permanent school fund certificate on or after September 1, 2017. The new subsection requires a payment from the charter district that is equal to 20% of the savings on the bond due to the guarantee by the permanent school fund.

The payment is due within 30 days of bond closing and is calculated in a manner similar to the existing rule, with the differences being that all amounts will be paid in one upfront payment and the amounts for the savings in future years will be discounted to their present value and included as part of the upfront payment. The discount factor will be the yield to worst of the Bloomberg Barclays US Aggregate 3-5 Year Bond Index on the last business day of the previous month.

The adopted amendment also provides for the commissioner to choose a replacement data source if the two indices referenced in the rule become discontinued. The commissioner is allowed to

choose another data source for a reasonable period of time until the rule can be amended with another acceptable data source.

In response to public comment, two changes were made to the rule at adoption. Subsection (c) was modified to align with the TEC, §45.0571(c), by specifying that payments remitted by a charter district into the Reserve Fund are only required until the fund reaches its maximum balance. In addition, subsection (c)(4) was modified to allow a charter district to estimate the payment amount due prior to pricing bonds, which accounts for the possibility that the amount of the payment could change prior to the bonds being sold.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began August 25, 2017, and ended September 25, 2017. Following is a summary of the public comments received and corresponding agency responses.

Comment: The Texas Charter Schools Association (TCSA); Schulman, Lopez, Hoffer & Adelstein, LLP; and Andrews Kurth Kenyon LLP commented that payment remitted by a charter district into the Reserve Fund should only be required until the fund reaches its maximum balance as expressed in statute.

Agency Response: The agency agrees that the Reserve Fund is subject to a statutory limit and has modified §33.1001(c) at adoption to specify that payments are only required until the Reserve Fund reaches its statutory limit.

Comment: TCSA and Andrews Kurth Kenyon LLP requested that the proposed rule be amended to provide for a charter district to confirm with the agency the amount to be remitted to the Reserve Fund prior to the pricing of the bonds.

Agency Response: The agency recognizes the need for a charter district to know the total cost of guaranteed bonds while marketing them to potential investors. However, since the calculation for the payment into the Reserve Fund could change prior to pricing due to changes in the principal payment schedule and/or the timing of the bonds being sold, §33.1001(c)(4) was modified at adoption to allow a charter district to estimate the payment amount due prior to pricing the bonds.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code, §45.0571, as amended by Senate Bill 1480, 85th Texas Legislature, Regular Session, 2017, which authorizes the commissioner of education to adopt rules to determine the amount of the statutorily required 20% savings set aside for the Charter District Bond Guarantee Reserve Fund.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §45.0571, as amended by Senate Bill 1480, 85th Texas Legislature, Regular Session, 2017.

§33.1001. Payments for Remittance to Charter District Bond Guarantee Reserve Fund.

(a) In this section, "charter district," "combination issue," and "refunding issue," have the meanings assigned to those terms by §33.67 of this title (relating to Bond Guarantee Program for Charter Schools).

(b) The following provisions apply to charter district bonds guaranteed under §33.67 of this title that receive final approval from the commissioner of education in the form of the permanent school fund certificate before September 1, 2017.

(1) A charter district that has bonds guaranteed under §33.67 of this title must annually remit to the commissioner a payment for deposit in the Charter District Bond Guarantee Reserve Fund established under the Texas Education Code (TEC), §45.0571, as described in paragraphs (4) and (5) of this subsection.

(2) To calculate the total payments required under paragraphs (4) and (5) of this subsection for charter district bonds guaranteed under §33.67 of this title with a closing date before March 1, 2017, the first annual amount due under this section is the amount equal to 0.1% of the principal amount that is outstanding on the date the bonds were issued, which is the closing date for the bonds. The amount due annually for each subsequent payment due under this section is the amount equal to 0.1% of the principal amount that is outstanding on the anniversary of the closing date.

(3) To calculate the total payments required under paragraphs (4) and (5) of this subsection for charter district bonds guaranteed under §33.67 of this title with a closing date on or after March 1, 2017, the commissioner will calculate an amount equal to 10% of the savings to the charter district resulting from the lower interest rate on the bond due to the guarantee by the permanent school fund.

(A) The annual amount due to the Charter District Bond Guarantee Reserve Fund will be computed as $R = P \times S \times 0.1$, where:

(i) "R" is the amount to be contributed to Charter District Bond Guarantee Reserve Fund;

(ii) "P" is the outstanding principal amount on the closing date of the bond for payments made under paragraph (4) of this subsection or the outstanding principal amount on the anniversary of the closing date of the bond for payments made under paragraph (5) of this subsection; and

(iii) "S" is the savings to the charter district as a result of the bond guarantee under §33.67 of this title, which is computed as the difference between the preceding 36-month moving average of the Thomson Reuters Municipal Market Data index yield for the Baa twenty-year maturity and the preceding 36-month moving average of the Thomson Reuters Municipal Market Data index yield for the AAA twenty-year maturity. If the Thomson Reuters Municipal Market Data index is discontinued, the commissioner shall choose another data source for a reasonable period of time until this section can be amended with another acceptable data source.

(I) The savings "S" shall remain constant for the life of the newly guaranteed bond.

(II) If Thomson Reuters Municipal Market Data index is decomposed to reflect each ratings step within the Baa universe, the savings calculation shall be based on the charter district's actual rating to the comparable rating in the decomposed index.

(B) The commissioner will semi-annually compute "S," which is the value to be used to compute "R" for charter district bonds, and post it on the agency's website during the first week of September and March.

(4) The first payment due under this section is due within 30 days of the closing date. The commissioner will direct the comptroller to withhold the amount of this first payment from the state funds otherwise payable to the charter district, on a date that falls within 30 days of the closing date. If, on that date, the state funds remaining to be paid to the charter district for the year are less than the amount due to the reserve fund for that year, the commissioner will recover the difference as authorized under the TEC, §42.258.

(5) Each subsequent annual payment is due on the anniversary of the closing date. The commissioner will direct the comptroller to annually, during the month of the anniversary date, withhold the amount due to the reserve fund for that year from the state funds otherwise payable to the charter district. If, on the anniversary date, the state

funds remaining to be paid to the charter district for the year are less than the amount due to the reserve fund for that year, the commissioner will recover the difference as authorized under the TEC, §42.258.

(6) The commissioner will provide a charter district with a statement of the total and annual amounts due under this section within 60 days of the date that the bonds approved for the guarantee under §33.67 of this title are sold. The commissioner will calculate savings for refunding issues, and the refunding portion of combination issues, using the principal amount that is being refunded.

(7) No payment is due on an anniversary date on which no principal amount is outstanding. The total amount due under this section is the sum of all annual payments due.

(c) The following provisions apply to charter district bonds guaranteed under §33.67 of this title that receive final approval from the commissioner in the form of the permanent school fund certificate on or after September 1, 2017, provided that such payments shall only be required until the Charter District Bond Guarantee Reserve Fund reaches the limit established under the TEC, §45.0571.

(1) A charter district that has bonds guaranteed under §33.67 of this title must remit to the commissioner a payment for deposit in the Charter District Bond Guarantee Reserve Fund established under the TEC, §45.0571, as described in paragraph (3) of this subsection.

(2) To calculate the payment required under paragraph (3) of this subsection, the commissioner will calculate an amount equal to 20% of the savings over the life of the bond to the charter district resulting from the lower interest rate on the bond due to the guarantee by the permanent school fund. The calculation will be based on subsection (b)(3) of this section, but the formula in subsection (b)(3)(A) of this section will read $R = (P \times S \times 0.2) \div (1 + PV)^T$.

(A) "PV" is the present value discount factor, which is the yield to worst of the Bloomberg Barclays US Aggregate 3-5 Year Bond Index on the last business day of the previous month. If the Bloomberg Barclays US Aggregate 3-5 Year Bond Index is discontinued, the commissioner shall choose another data source for a reasonable period of time until this section can be amended with another acceptable data source.

(B) "T" is the number of years from the anniversary of the closing date of the bond.

(C) The payment is equal to the sum of the amount required under subsection (b)(4) of this section and the present value of the amounts required for each year of the bond under subsection (b)(5) of this section.

(3) The payment due under this section is due within 30 days of the closing date.

(4) The charter district will estimate the amount due prior to pricing the bonds. The commissioner will provide a charter district with a statement of the amount due under this section after the bonds approved for the guarantee under §33.67 of this title are sold but before they close. The commissioner will calculate savings for refunding issues, and the refunding portion of combination issues, using the principal amount that is being refunded.

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 22. EXAMINING BOARDS

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 367. ENFORCEMENT

22 TAC §367.10

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §367.10. The amendments are adopted without changes to the proposed text as published in the July 28, 2017, issue of the *Texas Register* (42 TexReg 3733) and will not be republished.

The amendments to §367.10 modify the Board's procedures for imposing an administrative penalty and are adopted to implement SB 2065 (85th Regular Legislative Session). New subsections (c) and (d) are added to allow the Enforcement Committee to present to the Board a motion for default order along with a proposed Default Order containing findings of fact and conclusions of law when a Respondent fails to respond to the Notice of Alleged Violation. All subsequent subsections are re-lettered accordingly. The amendments also allow the Board to grant the relief recommended in the proposed Default Order, or such other relief as may be justified by the evidence presented by the Enforcement Committee. The existing provision that requires the Enforcement Committee to set a formal hearing at the State Office of Administrative Hearings if, within twenty days of receipt, a respondent fails to respond to the Notice of Alleged Violation is deleted.

No comments were received regarding the adoption of these amendments.

The amendments are adopted under section 1301.251 of the Texas Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce the chapter and SB 2065, which grants the Board the authority to adopt a Default Final Order when a respondent fails to respond to the Notice of Alleged Violation and accept the recommended administrative penalty or request a hearing on the alleged violation.

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 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

31 TAC §58.21, §58.22

The Texas Parks and Wildlife Commission in duly noticed meeting on August 24, 2017, adopted amendments to §58.21 and §58.22, concerning the Statewide Oyster Fishery Proclamation, with changes to the proposed text as published in the July 21, 2017, issue of the *Texas Register* (47 TexReg 3613)).

The change to §58.21, concerning Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules, eliminates Jackson County from the description of Carancahua Bay in subsection (c)(2)(D), removes Keller Bay from the list of minor bay systems proposed for closure to take of oysters, and clarifies the nature of the 300-foot limit from shorelines within which it is unlawful to take oysters (by stipulating that the 300-foot limit begins at the water's edge and includes all exposed oysters within that zone during low tide). Upon further review, the department determined that Keller Bay, although a smaller bay, is unlike the other minor bay systems proposed for closure, primarily because it is deeper, contains no seagrass beds, and is not bordered by fringing marshlands, all of which make it less likely that oyster populations there will benefit from the proposed management measures. The change to the language establishing the 300-foot limit within which oyster harvest is prohibited is necessary because the department is persuaded the proposed language, although technically and legally appropriate, was problematic from the perspective of compliance and enforcement. By creating an initial measuring point that is easy to understand (the water's edge), the department believes it will be easier for the public to comply, which should curb if not eliminate unintentional violations. The department also considered that in some tidal flats it might be possible for oysters to be exposed within the 300-foot limit during low tide; therefore, since the intent of the rulemaking is to eliminate the harvest of oysters in these areas, the provision has been altered to include any exposed oysters within the 300-foot zone during low tide. Finally, the rule as proposed indicated that Carancahua Bay is contiguous with Jackson County. It is not.

The change to §58.22, concerning Commercial Fishing, eliminates the proposed Monday closure to legal oyster fishing and replaces it with a Saturday closure, and imposes a 30-sack daily bag limit to replace the previous 40-sack daily bag limit (the proposed daily sack limit was 25). The department received compelling public comment to the effect that the preference of the regulated community is for a Saturday closure rather than a Monday closure. The department considers that since the intent of the proposed amendment was to close an additional day per week to oyster harvest in order distribute fishing effort more evenly across the entirety of the open season, it is irrelevant which day is selected. With respect to the sack limit reduction, the proposed sack limit of 25 sacks per day was intended to optimize the recovery of oyster resources; however, a 30-sack daily limit is believed to be able to achieve the same goals over a longer time period.

The amendments generally are intended to protect, conserve, and enhance the oyster resources of the state by extending harvest opportunities later into the season; reducing the frequency and duration of in-season closures by reducing the daily sack limit and reducing the number of legal fishing days per week; lowering the limit for undersize oysters that may be possessed; and closing oyster harvest in six minor bays and within 300 feet of shorelines in areas designated by the Texas Department of State Health Services as Approved or Conditionally Approved for the harvest of oysters.

The effects of several natural disaster events occurring along the coast of Texas over the last several years, beginning with Hurricane Ike in 2008 and culminating with major flooding events in 2015-2016, together with high harvest pressure, have exacted a biological and economic toll on Texas' oyster resources and associated industries. The cumulative impacts of these events have contributed to declining trends in oyster resources, and consequently, in commercial landings. Commercial landings in 2015 declined to levels not seen since the early 1980's.

Hurricane Ike's passage over Galveston Bay in 2008 impacted the Galveston Bay ecosystem and was especially destructive to the bay's extensive oyster habitat. Over 8,000 acres, representing approximately half of the bay's reefs, were damaged or destroyed due to sedimentation from the storm surge.

Between 2010 and early 2015 Texas experienced the second-worst drought in state history, surpassed only by the drought of the 1950's. The worst one-year drought record in Texas' history was 2011 and was recorded as a 500-year drought of record. Salinities in coastal bay systems rose to levels not previously observed. In Galveston Bay, salinities reached 42 parts per thousand, the highest level recorded in forty years of department monitoring. Though high salinities are not necessarily detrimental to oysters, they do seem to allow for greater predation and disease. These predators and diseases would normally not be as prevalent in lower salinities. The Hays rocksnail ("oyster drill"), *Stramonita haemastoma canaliculata,* is the most destructive predator of eastern oysters in the Gulf of Mexico (White and Wilson 1996) but is limited by intolerance to low salinity (Chapman 1959, Hofstetter 1977). Reports of predation rates of 80% on young oysters have been reported (May and Bland 1970; Hofstetter 1977; Chapman 1959).

At the height of the 2010-2015 drought, commercial oyster fishermen reported increased catches of oyster drill on beds in Galveston Bay that rarely produced this predatory snail in the past. Fishery-independent sampling by the department also documented increased catches of oyster drill in oyster dredge samples and in locations in the bay system where they had not been previously documented.

Oyster resources were further impacted by flood events in 2015 and 2016. Analysis of climate data has shown that dipole events (an abrupt year-to-year transition from drought to flood), are a frequent occurrence in the Southern Great Plains (Texas and Oklahoma) (Christian et al. 2015). As one of the worst droughts in Texas history came to an end in early 2015 it was followed by significant rainfall events that resulted in some of the worst flooding in the state's history. Flooding began in April 2015 and continued through May, reaching official disaster status

with the declaration of six State Disaster Proclamations (five of which were elevated to Federal Flooding Disasters in eleven coastal counties designated by the National Oceanographic and Atmospheric Administration (NOAA) (http://www.census.gov/geo/landview/lv6help/coastal_cty.pdf)). Flooding was further exacerbated with the onset of Tropical Storm Bill (June 16, 2015), which significantly impacted Matagorda and San Antonio bays. Disaster-level flooding occurred again in the fall of 2015 and spring of 2016.

Trinity River inflows to Galveston Bay in 2015 were recorded at levels 154% above the long-term mean river inflow (1941-2015) and by May 2016, inflows from the Trinity River had already exceeded the long-term yearly inflow rates by 66%. Similar trends were recorded for Matagorda Bay (126% above long-term yearly inflow rates), Aransas Bay (89% above) and San Antonio Bay (65% above). These inflow rates had specific consequences for all stages of the oyster life cycle. Oysters are an immotile (incapable of voluntary relocation) species that settle out of the water column within approximately two weeks of spawning. Survival at settlement is directly related to two primary characteristics: the availability of elevated, hard substrate for attachment and salinities conducive to survival. Oyster reefs occur where these two characteristics are most abundant; thus, reefs are continually settled by new oysters and the reef grows. During flooding events, oyster abundance and filtration rates decline precipitously (Beseres Pollack, et. al., 2011).

The preferred salinity range for oysters is 14-30% (mille, or tenth of a percent) for adults and 18-23% for egg and larval development. Spat (juvenile oysters) settling is optimized at 16-22% with diminishing settlement below 16% (Pattillo et. al., 1997). While spawning in Texas is likely to occur in every month except July and August, peak spawnings are May to early June and again in September and October.

In 2015-16, the traditionally highest oyster producing bays (Copano and Galveston) had 14 and 15 continuous months, respectively, of suboptimal salinities for spat settlement. All major bays had suboptimal spat settlement conditions during the spring 2015 spawning season with suboptimal conditions persisting in Galveston and Copano bays through the fall spat settlement season as well (unpublished department data). Additionally, when salinities drop below 10% "limited or no recruitment" occurs (La Peyre et al., 2013). Based on the average monthly salinities reported for Galveston Bay for April through July 2015, limited recruitment is believed to have occurred. Similarly, monthly mean salinities for 2016 suggest sub-optimal salinities for recruitment between March and May, which appears to have resulted in the loss of a second recruitment cohort (age class). Copano Bay experienced similar low salinity levels (<10%) between May and August 2015, which may have resulted in limited recruitment, and from April 2015 through May 2016 experienced salinity levels below the optimal level for spat settlement. Similar sub-optimal conditions were observed in Matagorda, San Antonio, and Aransas bays.

Mechanically, flood inflows are also capable of sweeping any oyster larvae out of the bays and into non-optimal habitats, resulting in direct losses of larvae (Wang et. al., 2008). This is particularly devastating for Texas bays as the historically high volume and continual inflow events may have also led to minimal recruitment to the reefs. These sub-optimal salinity conditions and long-term high volume events have the potential to create long-term adverse consequences for Texas oyster resources.

A strong temperature-salinity linkage may negatively impact oyster recruitment, survival and growth. As salinities fall below 5% during summer months and water temperatures increase above 25°C, oyster conditions degrade. From May 2015 through mid-October water temperatures exceeded 25°C while salinities fell below 5% for Galveston, San Antonio and Copano Bays. Average salinities in Matagorda and Aransas Bays were 6.3 and 8.7%, respectively, which suggests localized areas of degradation.

Each of these environmental events, taken singularly, would not necessarily be expected to result in significant losses of oyster resources and associated negative commercial impacts; however, the cumulative impacts over such a relatively short timeframe most certainly contributed to reduced oyster abundance and the commercial declines observed following the flooding events in 2015 and 2016. Landings (pounds of meat) and ex-vessel values (dockside value) for oysters during 2015 were 1,585,432 pounds and $8,246,302, respectively. These values reflect a 69.1% and 51.1% reduction in landings and ex-vessel value, respectively, from the previous 10-year average.

To address this situation, the amendment to §58.21, concerning Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules, would lower the tolerance allowed for the quantity of undersize oysters in a cargo from 15% to 5%, which is the statutory minimum (Parks and Wildlife Code, §76.112(b)).

As oyster resources have been reduced due to environmental impacts and overharvest, the illegal harvest of undersize oysters has increased. Citations for possession of undersize oysters increased 149% during the 2016-17 oyster season, compared to the previous year. In February, 2017, thirty-seven citations were issued in three major bay systems for unlawful possession of undersize oysters. In these cases, 68% of the cargos were found to be composed of more than 30% undersize oysters and 20% of the cases had cargos composed of more than 50% undersize oysters. Continued harvest of undersize oysters can result in further negative economic impacts to the oyster industry because areas closed by the department under the authority of Parks and Wildlife Code, §76.115, must remain closed longer to allow small oysters to grow to legal size. Additionally, the removal of small oysters further delays the recovery of the resource as these oysters are sexually mature and would contribute to recruitment if left on the reefs until they reach legal size.

The amendment to §58.21 also closes six minor bays to all oyster harvest (recreational and commercial) and within a 300-foot buffer zone along shorelines located in areas designated by the Department of State Health Services (DSHS) as Approved or Conditionally Approved for oyster harvest (to include all exposed oysters on the landward side of the 300-foot zone). The minor bays proposed for closure are unique in that they are relatively shallow systems containing intertidal and shallow-water oyster habitat. The proximity of shallow water and intertidal oyster habitat to other estuarine habitat types (e.g. seagrasses and marshes) is a major factor affecting macrofauna (invertebrates that live on or in sediment, or attached to hard substrates) density and community composition (Grabowski et al. 2005; Gain et al. 2017). Research has demonstrated that densities of macrofaunal organisms and species diversity are higher within oyster habitat compared to seagrass beds or marsh-edge interfaces (Gain et al. 2017). Further, nekton (aquatic animals that are able to swim and move independently of water currents) and benthic crustaceans (crustaceans at the lowest depth) densities

are considerably higher on intertidal oyster habitat compared to open-water subtidal oyster habitat (Robillard et al. 2010; Nevins et al. 2014; Froeschke et al. 2016). Over 300 different species have been documented using oyster reefs as habitat in North Carolina (Wells 1961).

Until recently, oyster resources located in these minor bays and shoreline areas have been rarely exploited, as commercial fishing has typically been directed towards the more-profitable and efficiently harvested reef complexes in larger and deeper waters; thus, the minor bays have functioned as de facto spawning reserves because harvest pressure has been minimal and oyster larvae produced from these areas are available to populate oyster habitat on adjacent reefs and bays. As oyster resources have become depleted on deep-water reefs, however, commercial fishermen have redirected their efforts to shallow-water reefs. In 2017, the department received a number of reports of oyster harvest in minor bays, including Christmas Bay, and received a petition requesting closing of oyster harvest in Christmas Bay.

With respect to recreational harvest, current rules allow recreational fishermen to retain up to two sacks of oysters per day during the public season; however, the biological impact of this harvest is minimal. Over the last 10 years the department has issued an average number of 36 sport oyster boat licenses per year (a sport oyster boat license is required to recreationally harvest oysters by use of tongs or dredge; otherwise, recreational harvest must be manual). The department conducts intercept surveys at boat access sites (boat ramps and marinas) throughout the year and records catch composition and effort for all species landed. The 33-year summary (1983-2016) of department data indicates 296 intercepts with anglers possessing oysters (an average of 9 intercepts per year). During the 2016 low-use season (covering the time period of the public oyster season, November through April) the department estimates that recreational fisherman spent 704 hours harvesting oysters, which resulted in a harvest of approximately 10.6 sacks (68.1 pounds estimated meat weight) over the six-month season.

The amendment to §58.22, concerning Commercial Fishing, reduces the commercial possession limit for oysters from 40 sacks per day to 30 and closes Saturday to commercial oyster harvest during the public season (November 1 of one year through April 30 of the following year). The combined effect of these two provisions is expected to be a reduction in the total number of sacks harvested during the early portion of the season, offset by an increase in the total number of sacks harvested during the later months, which is expected to provide a more stable and consistent price structure as well as a lengthening of the productive part of the season, both in terms of sacks per vessel landed and effective days fished.

A sack-limit analysis of the amendments found that the proposed measures could result in a total harvest reduction if there is no change in fishing behavior. Additional analysis of the 2015-16 season data shows that the average length of the season for a single vessel was 73 days and within that period the average commercial vessel made only 34 trips, averaging 24 sacks per day. The total number of days available during the 2015-16 was 182 days. From the first trip to the last trip the total number of days that elapsed was an average of 72 days. With the ability to expand the number of trips within the 72 days or extend trips further towards the end of the season, no significant reduction in total landings over the season is expected. The combination of the proposed daily sack limit reduction and Saturday closure could extend the effective harvest season during a time when oyster yield (meat-weight to shell-weight) is highest and more valuable to the commercial industry.

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The department received 277 comments opposing the adoption of all or part of the proposed rules. Of the comments opposing adoption, 172 articulated a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Eighty-eight commenters opposed adoption and stated support for an alternative proposal contained in a form letter. The proposal consisted of five elements: 1) an increase or no change to the current 40-sack daily limit, along with a mechanism allowing the department to alter daily sack limits during the season, based on landings and sampling; 2) retention of six days per week of oyster harvest opportunity 3) retention of current rules governing possession of undersize oysters; the elimination of Carancahua, Hynes and Keller bays from the list of bays proposed for closure to oyster harvest; and 5) replacement of the proposed closure to oyster harvest within 300-feet of the shoreline with a 300-foot closure zone around maintained piers and structures such as boat houses or boat lifts. The department disagrees with the comments and responds that implicit in the successful management of fisheries is the scientifically valid analysis of various meaningful data (population dynamics, geospatial distribution, fishing effort, and other factors) to inform and guide management strategies. With respect to daily sack limits, the department disagrees with the comment and responds that an analysis of the fishery since 2007 found that, in general, harvests of 50 sacks per day (which was lawful until the 2016-17 season) was greatest in November (when the season opens) and represented about 30% of trips. Since the 2014-15 season the percentage of trips reporting harvest of 50 sacks per day during November declined to less than 5% (2015-16 season data). Mean catch per day generally declined across the season, reaching the lowest values in April. Over the last ten years the average number of sacks harvested per day has been approximately 30. Based on these data, the department concludes that a reduction in the daily sack limit should result in the availability of oysters for harvest over a longer period of time, which in turn should result in higher yields of larger oysters for shucking, and accordingly higher sale prices. However, it is not imperative that the proposed 25-sack limit be implemented. The proposed 25-sack limit was intended to provide the most expedient avenue to stock replenishment, but a slightly higher sack limit is believed to be capable of achieving the intended goal, albeit over a longer time period; therefore the department has adopted a 30-sack limit. The department also responds that "in-season" modifications to sack limits on a bay-by-bay basis would be problematic because of the difficulties inherent in communicating these sorts of changes to the regulated community in real time (especially if done on a bay-by-bay basis) and the resultant misunderstandings and confusion that could negatively impact compliance and enforcement efforts.

With respect to opportunity, the department disagrees with the comment and responds that fishermen are not fully utilizing the available fishing opportunities the current regulations establish for this fishery. Since 2007, any given vessel fished 90 to 130 days each year on average, which is much less than the maximum possible season length of 182-183 days (155 days during 2016-17 season). Therefore, closing harvest for an additional day (in concert with a daily sack limit reduction) is not expected to lower the overall harvest during a season but should delay some harvest to later in the season when oysters will yield higher meat weights and be more valuable to the fishery. With respect to the proposed rules governing possession of undersized oysters, the department disagrees with the comment and responds that the 5% tolerance imposed by the rules is necessary if oyster populations are to recover and thrive. The rule as adopted will result in more undersize oysters being returned to the reef and contribute to recruitment. The department also notes again that the harvest of undersize oysters at the current tolerance (15%) will result in further negative economic impacts to the oyster industry because when the department is forced to close an area to allow for repopulation and recovery, those areas must remain closed for as long as it takes for the remaining oysters to reach a legal size.

With respect to the bay closures imposed by the rules as adopted, the department disagrees with the comment and responds that failing to substantially reduce harvest in these systems will result in negative biological impacts not only to oyster populations (because these bays are in effect nursery areas that populate the larger bay systems), but to other communities of great ecological importance as well (because of the physical effects of oyster harvest in these shallow water communities). The rules as adopted will provide protection to shallow water and intertidal oyster habitat and associated ecological webs while also providing a source of oyster larvae that disperse throughout these and adjacent bay systems. As previously noted in this preamble, Keller Bay in Calhoun County was removed from the list of affected bays. No other changes were made as a result of the comments.

Sixty-three commenters opposed the portion of the proposed amendments that effect closures of minor bays and shoreline areas to recreational harvest (with one comment suggesting a five-year "sunset" provision). The department disagrees with the comments and responds that these areas are unique in that they are relatively shallow systems containing intertidal and shallow-water oyster habitat. The proximity of shallow water and intertidal oyster habitat to other estuarine habitat types (e.g. seagrasses and marshes) is a major factor affecting macrofaunal (invertebrates that live on or in sediment or attached to hard substrates) density and community composition (Grabowski et al. 2005; Gain et al. 2017). Research has demonstrated that densities of macrofaunal organisms and species diversity are higher within oyster habitat compared to seagrass beds or marsh-edge interfaces (Gain et al. 2017). Further, nekton and benthic crustacean densities are considerably higher on intertidal oyster habitat compared to open-water subtidal oyster habitat (Robillard et al. 2010; Nevin et al. 2014; Froeschke et al. 2016). Over 300 different species have been documented using oyster reefs as habitat in North Carolina (Wells 1961). The shallow-water and intertidal oyster reefs occurring in the areas to be closed function as de facto spawning reserves because harvest pressure has been minimal and oyster larvae produced from these areas are available to populate oyster habitat on adjacent reefs and bays. Protecting these valuable

shallow-water and intertidal oyster resources is an integral part of the overall management strategy for oysters in Texas. The length of time necessary for the success or failure of the rules is unknown, and an arbitrary expiration of effectiveness is unscientific and could interfere with or confound positive management outcomes. The department will continue to monitor oyster resources and make regulatory changes as necessary to provide harvest opportunity that is consistent with the principles of sound biological management. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that the bays proposed for closure should remain open for harvest, but the lawful means of harvest should be restricted to tongs only. The department disagrees with the comment and responds that most, if not all, harvest occurring in the affected areas is by hand because the bays in question are too shallow for access by boats carrying tongs. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that opposition to any area closure. The department disagrees with the comment and responds that, as explained in detail elsewhere in this rulemaking, oyster populations in Texas have been uniquely stressed and it is imperative for the department to act to protect oyster resources; protecting valuable shallow-water and intertidal oyster resources is an integral part of the overall management strategy for oysters in Texas. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the reduction in the daily sack limit was unnecessary and in fact should be increased. The department disagrees with the comment and responds that department data indicate that landings have been stable over the last ten years (averaging 31 sacks per day or less) despite daily sack limits being higher. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules would harm individual fishermen. The department disagrees with the comment and responds that under current regulations, fishermen are not fully utilizing the available fishing opportunity. The average number of sacks harvested per day has been 31 or less even though daily limits were higher and, since 2007, vessels fished a season of 90 to 130 days each year on average, which is much less than the maximum possible season length of 182-183 days. Therefore, the department has determined that the rules as adopted will not harm fishermen and in fact could be beneficial because they will spread some harvest to later in the season, when oysters will yield higher meat weights and be more valuable at market. No changes were made as a result of the comment.

One commenter opposed and stated that the rules will not be effective. The department disagrees with the comment and responds that because the rules as adopted are based on the best available science and management strategies, there is high confidence that a positive outcome will occur. No changes were made as a result of the comment.

One commenter opposed adoption and stated that Christmas Bay should remain open to oyster harvest. The department disagrees with the comment and responds that the ecological and hydrological characteristics of Christmas Bay (especially in light of recent harvest trends) make it an especially strong candidate for the type of management strategy contemplated by the rules. No changes were made as a result of the comment.

One commenter opposed adoption of the proposed shortening of the weekly lawful fishing hours and the proposed reduction in the threshold for possession of undersize oysters. The department disagrees with the comment and responds that the rules as proposed are designed to redistribute fishing effort to the later portion of the season when oyster meat-weights are higher and more valuable to the industry, and to return more undersize oysters and dead shell to reefs in order to increase recruitment and provide substrate. No changes were made as a result of the comment.

One commenter opposed adoption and stated that rules would negatively impact private oyster beds (oyster beds fished under a certificate of location issued by the department) and that the daily sack limit should be reduced as much as necessary in order to retain the ability to fish six days per week. The department disagrees with the comment and responds that, as noted earlier in this preamble, fishermen are not utilizing all the available days for harvest that are currently available. Therefore, the distribution of effort over a longer time period will offset the loss of one day per week of opportunity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposed definition of the 300-foot shoreline closure area was confusing and that restoration areas should not be subjected to harvest. The department agrees that the proposed definition was problematic and has made changes accordingly. The department also agrees that restoration areas should not be subject to harvest. No changes were made as a result of the comment.

Seven commenters opposed adoption and stated that the rules were either not stringent enough or should apply to more waterbodies. The department disagrees with the comment and responds that the department is confident that the rules as adopted will effectively protect and conserve shallow water and intertidal oyster resources. No changes were made as a result of the comment.

The department received 1,146 comments supporting adoption of the rules as proposed.

The following groups and associations commented in opposition to adoption of the rules as proposed:

Oyster Advisory Workgroup

The following groups and associations commented in support of adoption of the rules as proposed:

Christmas Bay Foundation

Coastal Bend Bays and Estuary Program

Coastal Conservation Association

Coastal Resources Advisory Committee

Ducks Unlimited

Galveston Bay Foundation

Houston Chapter of Safari Club International

Houston Safari Club

Lone Star Bowhunters Association

Lone Star Chapter - Sierra Club

San Antonio Metropolitan Association of Bass Clubs

Sensible Management of Aquatic Resources in Texas

Texas Association of Bass Clubs

Texas Big Horn Society

Texas Black Bass United

Texas Conservation Alliance

Texas Dog Hunters Association

Texas Dove Hunters Association

Texas Foundation for Conservation

Texas Outdoor Writers Association

Texas Wildlife Association

The amendments are adopted under Parks and Wildlife Code, §76.112, and §76.301, which, respectively, authorize the commission to adjust the tolerance for undersize oysters within a cargo of oysters and regulate the taking, possession, purchase and sale of oysters, including prescribing the times, places, conditions, and means and manner of taking oysters.

§58.21. Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules.

(a) Seasons and Times.

(1) The open season extends from November 1 of one year through April 30 of the following year.

(2) Legal oystering hours--sunrise to 3:30 p.m.

(b) Size Limits and Possession of Undersized Oysters and Shell.

(1) Size limit--Legal oysters must be three inches or larger as measured along the greatest length of the shell.

(2) Oysters between 3/4 inch and three inches in length and dead oyster shell that is greater than 3/4 inch (measured along any axis) must be returned to the reef at the time of harvest.

(3) Unculled oysters must not be sacked and must be kept separate from culled oysters at all times.

(4) It is unlawful for any person to take or possess a cargo of oysters more than 5% of which are between 3/4 inch and three inches measured from beak to bill or along an imaginary line through the long axis of the shell. For the purposes of this paragraph, any dead oyster shell measuring greater than 3/4 inch along any axis shall be counted as an undersized oyster.

(c) Area Closures.

(1) There is no open public season for oysters from areas declared to be restricted or prohibited by the Department of State Health Services or areas closed by the commission.

(A) The director may close an area to the taking of oysters upon finding that the area is being overworked or damaged or the area is to be reseeded or restocked, and may re-open the areas as provided in Parks and Wildlife Code, §76.115.

(B) An order to close an area shall state the criteria used by the director to determine that the closure is warranted.

(C) The department shall consult with members of the oyster industry regarding the management of oyster beds in the state.

(D) For the purposes of this section an area will include those designated by the Department of State Health Services as "Approved" and "Conditionally Approved" or other areas based on evaluation by the department.

(E) No person may harvest oysters in an area closed by order of the commission or the executive director.

(2) No person may take or attempt to take oysters within an area described in this paragraph. The provisions of subparagraphs (A) and (B) of this paragraph cease effect on November 1, 2018.

(A) Galveston Bay.

(i) Todd's Dump Reef. The area within the boundaries of a line beginning at 29° 29' 55.4"N, 94° 53' 40.1"W (29.498733°N, -94.894467°W; corner marker buoy A); to 29° 29' 55.4"N, 94° 53' 30.6"W (29.498724°N, -94.891834°W; corner marker buoy B); thence to 29° 29- 46.6"N, 94° 53- 30.4"W (29.496273°N, -94.891768°W; corner marker buoy C); thence to 29° 29' 46.6"N, 94° 53' 40.2"W (29.496273°N, -94.894495°W; corner marker buoy D); and thence back to corner marker buoy A.

(ii) South Redfish Reef. The area within the boundaries of a line beginning at 29° 28' 21.1"N, 94° 49' 17.3"W (29.472517°N, -94.821472°W; corner marker buoy A); thence, to 29° 28' 08.3"N, 94° 49' 00.3"W (29.468971°N, -94.816744°W; corner marker buoy B); thence to 29° 27' 58.9"N, 94° 49' 09.7"W (29.466359°N, -94.81935°W; corner marker buoy C); thence to 29° 28' 12.0"N, 94° 49' 26.5"W (29.469989N, -94.824025°W; corner marker buoy D); and thence and back to corner marker buoy A.

(iii) Texas City 1 (Mosquito Island). The area of Middle Reef contained area within the boundaries of a line beginning at 29° 23' 52.1"N, 94° 52' 41.3"W (29.397811°N, -94.878138°W; corner marker buoy A); thence to 29° 23' 52.3"N, 94° 52' 39.2"W (29.39786°N, -94.87757°W; corner marker buoy B); thence to 29° 23' 45.1", 95° 52' 37.9"W (29.395867°N, -94.877184°W; corner marker buoy C); thence to 29° 23' 44.9"N, 95° 52' 39.9"W (29.395813°N, -94.877753°W; corner marker buoy D); and thence back to corner marker buoy A.

(iv) Texas City 2 (Fishing Pier). The area within the boundaries of a line beginning at 29° 22' 58.2"N, 94° 51' 39.7"W (29.382833°N, -94.861037°W; corner marker buoy A); thence to 29° 22' 57.5"N, 94° 51' 36.2"W (29.382645°N, -94.860069°W; corner marker buoy B); thence to 29° 22' 56.3"N, 94° 51' 36.6"W (29.382301°N, -94.860169°W; corner marker buoy C); thence to 29° 22' 57.0"N, 94° 51' 40.1"W (29.382491°N, -94.861135°W; corner marker buoy D); and thence back to corner marker buoy A.

(B) Matagorda Bay - Half-Moon Reef. The area within the boundaries of a line beginning at 28° 34' 18.8"N, 96° 14' 08.4"W (28.571889°N, -96.235667°W; corner marker buoy A); thence to 28° 34' 15.7N, 96° 13' 59.4"W (28.571028°N, -96.233167°W; corner marker buoy B); thence to 28° 33' 53.8"N, 96° 14' 19.5W (28.564944°N, -96.23875°W; corner marker buoy C); thence to 28° 33' 57.0"N, 96° 14' 28.5"W (28.565833°N, -96.24125°W; corner marker buoy D); and thence back to corner marker A.

(C) Christmas Bay, Brazoria County.

(D) Carancahua Bay, Calhoun and Matagorda County.

(E) Powderhorn Lake, Calhoun County.

(F) Hynes Bay, Refugio County.

(G) St. Charles Bay, Aransas County.

(H) South Bay, Cameron County.

(I) Areas along all shorelines extending 300 feet from the water's edge, including all oysters (whether submerged or not) landward of this 300-foot line.

§58.22. Commercial Fishing.

(a) It is lawful to take oysters for commercial use by non-mechanical means.

(b) Gear Restrictions. During the open public season, it is unlawful while taking or attempting to take oysters for pay or the purpose of sale, barter, or exchange or any other commercial purpose to:

(1) use more than one dredge;

(2) use a dredge which exceeds 48 inches in width and a two-barrel capacity;

(3) have on board more than one dredge, unless spare dredges are secured, to or on the wheelhouse, or to the deck in such a manner as to not be readily accessible for use;

(4) have on board more than one winch chain, cable, or rope unless spare chains, cables or ropes are secured below deck; or

(5) have on board more than one lifting block unless spare blocks are secured below deck.

(c) Seasons and Times

(1) The open season extends from November 1 of one year through April 30 of the following year.

(2) Legal oyster fishing days- Monday through Friday.

(3) Legal oystering hours--sunrise to 3:30 p.m.

(d) Possession Limits. It is unlawful to take in one day, for pay or the purpose of sale, barter, or exchange, or any other commercial purpose, or to have on board any licensed commercial oyster boat more than:

(1) 30 sacks of culled oysters of legal size; or

(2) the volumetric equivalent of 6 sacks of unculled oysters while on the reef.

(e) Harvester/Shell Recovery Tag. A person who harvests oysters from Texas waters for commercial purposes shall, immediately upon harvest, attach a properly executed harvester/shell recovery tag to the outside of the sack in which the oysters are placed.

(1) A Harvester/Shell Recovery Tag is properly executed when all required information has been entered on the tag.

(2) The tag must be placed on the outside of the sack immediately upon filling, prior to unloading, and remain until the sack is empty or retagged and thereafter kept on file for 90 days.

(3) The appropriate harvester/shell recovery tag (green or white) must be affixed to the sack regardless of the season or whether the requirements of 25 TAC §241.57 (relating to Molluscan Shellfish Harvesting and Handling) apply.

(f) Reporting Requirements. A dealer who purchases or receives oysters directly from any person other than a licensed dealer must file a report with the department each month as prescribed under Parks and Wildlife Code, §66.019(c).

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

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.285

The Comptroller of Public Accounts adopts amendments to §3.285, concerning resale certificate; sales for resale, with changes to the proposed text as published in the May 12, 2017, issue of the *Texas Register* (42 TexReg 2515). The section is being amended to reflect the changes made to Tax Code, §151.006 ("Sale for Resale") by House Bill 3319, 80th Legislature, 2007; Senate Bill 1, 82nd Legislature, First Called Session, 2011; Senate Bill 755, 84th Legislature, 2015; and Senate Bill 1396, 84th Legislature, 2015, which added new Tax Code, Chapter 163, relating to sales and use taxation of aircraft. Additional changes are made to incorporate guidance regarding sales for resale provided by the Texas Supreme Court in *Combs v. Health Care Services Corp.,* 401 S.W.3d 623 (Tex. 2013); to memorialize long-standing comptroller policies that are not addressed in the existing section; and to make various other revisions to improve the clarity of the section.

Subsection (a) is amended to define several additional terms which are used but not defined in the current section.

Paragraph (1) is added to define the term "equipment." The definition is based upon the definition of the term provided in §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing).

Paragraph (2) is added to define the term "federal government." The definition is consistent with the definition of that term provided in §3.322 of this title (relating to Exempt Organizations).

Paragraph (3) is added to define the term "integral part," which appears in current §3.285 but is not defined therein. The proposed definition is consistent with existing comptroller policy as expressed in Comptroller's Decisions, including Comptroller's Decision Nos. 28,441 (1992) and 36,743 (1998), and the existing service-related sections of this title, including §3.330 (concerning Data Processing Services) and §3.354 (concerning Debt Collection Services).

Paragraph (4) is added to define the term "internet hosting service" as defined 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).

Paragraph (5) is added to define the term "machinery" as defined in §3.300 of this title.

Former paragraph (1), defining the term "Mexico," is renumbered as paragraph (6). Former paragraph (2), defining the term "Sale for resale," is deleted. A revised definition of the term incorporating recent legislative changes is provided in subsection (b).

Paragraph (7) is added to define the term "purchaser" to conform with Tax Code, §151.054(b) (Gross Receipts Presumed Subject to Tax) and §151.104(b) (Sale for Storage, Use, or Consumption Presumed), both of which require the purchaser to be "in the business of selling, leasing, or renting taxable items."

Paragraph (8) is added to define the term "seller" as defined in §3.286 of this title.

Paragraph (9) restates the Tax Code's definition of the term "taxable item." See Tax Code, §151.010 (Taxable Item).

Paragraph (10) is added to define the term "tax-free inventory." This definition is based upon Tax Code, §151.011(e) ("Use" and "Storage"), which establishes that the keeping or retaining of tangible personal property "for sale in the regular course of business" does not constitute a taxable use of that tangible personal property, as well as long-standing comptroller policy established in decisions such as Comptroller's Decision Nos. 31,088 (1995) and 32,194 (1998).

Former paragraph (3), defining the term "United States," is renumbered as paragraph (11).

New subsection (b) is added to define the term "sale for resale." Subsequent subsections are relettered accordingly. Paragraph (1)(A) implements Tax Code, §151.006(a)(1). The language is derived from subsection (a)(2)(A) and (D) of the current section. Additional language is added to require that the purchaser acquire the taxable item for the purpose of selling it "with or as a taxable item." This phrase was added to Tax Code, §151.006(a)(1) by Senate Bill 1, 82nd Legislature, First Called Session, 2011. This legislative change affirms the comptroller's long-standing policy that a sale for resale may only be made to a purchaser engaged in the business of selling, leasing, or renting taxable items who intends to resell the tangible personal property or taxable service acquired with or as a taxable item--a transaction that is subject to sales and use tax as provided in Tax Code, Chapter 151. Additional language incorporates the limitation set out in Tax Code, §151.058(a) (Property Used to Provide Taxable Services and Sales Price of Taxable Services) and Tax Code, §151.302(c) (Sales for Resale).

Subsection (b)(1)(B) addresses the purchase of tangible personal property for the sole purpose of leasing or renting the tangible personal property to another person. This subsection follows the language of current subsection (a)(2)(B) and Tax Code, §151.006(a)(2). A reference is added to §3.294 of this title (relating to Rental and Lease of Tangible Personal Property).

Subsection (b)(1)(C) implements Tax Code, §151.006(a)(3) and restates subsection (a)(2)(C) of the current section with non-substantive changes.

Subsection (b)(1)(D) implements Tax Code, §151.006(a)(4) and restates subsection (a)(2)(E) of the current section with non-substantive changes.

Subsection (b)(1)(E) restates Tax Code, §151.006(a)(5), which was added to the Tax Code by Senate Bill 1, 82nd Legislature, First Called Session, 2011.

Subsection (b)(1)(F) implements House Bill 3319, 80th Legislature, 2007, which added Tax Code, §151.006(b), revising the definition of a sale for resale to include the sale of a wireless voice communication device to be transferred as an integral part of a taxable service if payment for the service is a condition for receiving the wireless voice communication device.

Subsection (b)(1)(G) implements Senate Bill 755, 84th Legislature, 2015, effective June 10, 2015, which added Tax Code, §151.006(d) to modify the definition of "sale for resale" to include the sale of a computer program to a provider of Internet hosting services who sells a license to use the program to an unrelated user of Internet hosting services, provided that the reseller does not retain a right to use the program under that license.

Subsection (b)(2) states the regular course of business requirement of Tax Code, §§151.054(b), 151.104(b), 151.151, 151.152, and 151.154.

Subsection (b)(3) adds new language which incorporates the limitation set out in Tax Code, §151.302(c) that wrapping, packing, and packaging supplies cannot be purchased for resale.

Subsection (b)(4) provides that an item sold to a purchaser for use in performing a service that is not taxed under Tax Code, Chapter 151, is not a sale for resale, except in certain specified circumstances. This provision implements Senate Bill 1, 82nd Legislature, First Called Session, 2011, which enacted Tax Code, §151.006(a)(5) and (c). This provision restates the language in Tax Code, §151.006(c) without change.

Subsection (b)(5) memorializes long-standing comptroller policy that the sale of tangible personal property to a purchaser who acquires the tangible personal property for the purpose of reselling or transferring the tangible personal property outside of the United States or Mexico does not fall within the definition of a sale for resale. See, for example, Comptroller's Decision No. 29,343 (1993), which states, "Sales of goods destined for another country must qualify for exemption under §151.307 rather than §151.302." The paragraph refers purchasers buying taxable items for sale outside of the United States and Mexico to §3.323 of this title (relating to Imports and Exports).

Subsection (b)(6) states the care, custody, and control requirement of Tax Code, §151.302(b) and explains that the care, custody, and control of tangible personal property is transferred to the purchaser of the service when the purchaser has primary possession of the tangible personal property. This provision implements *Sharp v. Clearview Cable TV, Inc.,* 960 S.W.2d 424 (Tex. App.--Austin 1998, pet. denied).

Subparagraph (A) explains when a purchaser has primary possession of tangible personal property. Subparagraph (B) explains that a purchaser may also have primary possession if the purchaser or the purchaser's designee has physical possession of the tangible personal property and completely consumes it. Subparagraph (C) addresses when a purchaser has primary possession of a computer program. The standard established in this subparagraph is based upon §151.006(d), which addresses purchases of software by providers of Internet hosting services.

Mr. John Christian of Ryan, LLC submitted comments requesting that we delete subsection (b)(6)(A) of the proposed rule amendment. Mr. Christian states that the proposed language goes beyond the holding of the Third Court of Appeals in *Clearview Cable.* Further, Mr. Christian states that proposed subsection (b)(6)(A) conflicts with current §3.298(f)(1) of this title (relating to Amusement Services).

We considered Mr. Christian's comments, and we have determined that the proposed language is consistent with Tax Code, §151.058(a) and §151.302(c), and the holdings of *Clearview Ca-*

ble and *Fitness International, LLC v. Hegar,* 2016 Tex. App. LEXIS 6337 (Tex. App.--Austin 2016, pet. denied). We therefore decline to revise the proposed language.

We agree that some prior comptroller guidance may be inconsistent with subsection (b) of this section or with the holding of *Fitness International.* We intend to propose conforming amendments to §3.298(f)(1) of this title. In addition, we intend to partially supersede STAR Accession No. 9308L1249G14 (August 10, 1993) (stating a private country club could claim the sale for resale exemption on the purchase of range golf balls and tennis balls for a ball machine) as of the effective date of this section. We have already superseded STAR Accession No. 9411681L (November 3, 1994), which stated bowling alleys could claim the sale for resale exemption on the purchase of bowling balls.

Subsection (b)(7) adds new language which incorporates the limitation set out in Tax Code, §151.058(a), which states that a taxable service provider is the consumer of the machinery and equipment used to perform the taxable service. As the consumer of the machinery and equipment, the service provider cannot purchase the machinery and equipment tax-free as a sale for resale, unless the service provider transfers primary possession of the machinery and equipment to a customer. Subsection (b)(7) further provides that a taxable service provider is not using the machinery and equipment in performing the service if the person has transferred primary possession of the machinery or equipment to the purchaser of the service.

Finally, subsection (b)(8) refers taxpayers to §3.280 of this title (relating to Aircraft) for information relating to the "sale for resale" of aircraft to reflect the changes resulting from new Tax Code, Chapter 163, relating to sales and use taxation of aircraft, enacted by Senate Bill 1396, 84th Legislature, 2015.

Subsection (c), formerly subsection (b), is retitled from "Acceptance of resale certificate" to "Issuance and acceptance of resale certificates" because the subsection includes information related to a purchaser's issuance of a resale certificate as well as a seller's acceptance of a certificate. New paragraph (2) addresses when a purchaser may issue a resale certificate instead of paying sales or use tax on the purchase of a taxable item. Paragraph (2)(A) memorializes current comptroller policy that a purchaser must hold a Texas sales and use tax permit to issue a resale certificate. Refer to Comptroller's Decision No. 18,660 (1986). This requirement is consistent with the requirement that a sale for resale be made to a purchaser engaged in the business of selling taxable items. Paragraph (2)(A) also restates the information currently found in subsection (b)(3) and adds language to memorialize the comptroller's long-standing policy that a sale for resale includes the sale of tangible personal property for the purpose of maintaining the tangible personal property in a tax-free inventory. This is based on Tax Code, §151.011(e) ("Use" and "Storage") and Comptroller's Decision Nos. 31,088 (1995) and 32,194 (1998).

New paragraph (2)(B) adds language providing that a purchaser may not issue a resale certificate for items that the purchaser knows, at the time of purchase, will be used or consumed by the purchaser. This provision, stated differently, is found in current subsection (f), relating to the improper use of a resale certificate.

The remainder of the information currently provided in subsection (b)(1) of the current section is reorganized under new subsection (c)(3)(A).

We have amended subsection (c)(3)(A) from the version proposed in the *Texas Register* to add the word "presumed." The revised subparagraph follows more closely the language of Tax Code, §151.054, which provides that all gross receipts of a seller are presumed to have been subject to the sales tax unless the seller has accepted a properly completed resale or exemption certificate.

Current subsection (b)(2) is deleted and new subsection (c)(3)(B) is proposed to explain the good faith safe harbor in greater detail. This subparagraph memorializes long-standing comptroller policy regarding the elements required for such good faith acceptance. See STAR Accession No. 9105L1110D06 (May 20, 1991) and Comptroller's Decision Nos. 35,834 (1997), 48,258 (2009), and 105,608 (2012). This subparagraph also revises the statement in the current section that, in order to accept a resale certificate in good faith, a seller must lack actual knowledge that the sale is not a sale for resale and must take responsibility to notice the type business generally engaged in by the purchaser as shown on the resale certificate. For clarity and readability, these requirements are now described as follows: "the seller does not know, and does not have reason to know, that the sale is not a sale for resale." See Comptroller's Decision No. 48,258 (2009) ("The Comptroller has construed her rule to require 'no reason or basis for the seller to suspect that the certificate is invalid.' It reflects the 'should have known' concept.")

Current subsection (b)(3) is deleted, as the information contained in that subsection is now provided in subsection (c)(2)(A). Current subsection (b)(4) is relettered as subsection (c)(3)(C) and the title to referenced §3.286 is deleted.

New subsection (c)(3)(D) is added to alert sellers of the related record-keeping requirements by cross-referencing §3.281 of this title (relating to Records Required; Information Required) and providing that resale certificates are subject to the record-keeping requirements set out in that section.

Current subsection (c), relating to blanket resale certificates, is renumbered as subsection (c)(4). The subsection is also amended to delete the word "only," so that the section now reads, "a purchaser who purchases items for resale." This amendment is made to reflect current comptroller practice.

New subsection (c)(5) memorializes prior comptroller guidance, not reflected in the current section, that a broker or dealer who only buys and sells raw commodities, such as natural gas, raw cotton bales, or raw aluminum, in bulk is not required to hold a sales tax permit and is not required to issue a resale certificate when making such purchases. A broker or dealer may issue a resale certificate, if requested by the seller, even if the broker or dealer does not hold a tax permit. See, for example, STAR Accession Nos. 8909L0957A03 (September 29, 1989), 9608300L (August 15, 1996), and 200710196L (October 18, 2007).

Subsection (d), which addresses resale certificates issued by retailers outside Texas, is amended to add paragraphs (4) - (6) and to make minor revisions that are intended to make the subsection easier to read, not to change the meaning of the subsection. New paragraph (4) is added to advise taxpayers that retailers not located inside the United States or Mexico may issue resale certificates to purchase items for resale outside Texas but within the United States or Mexico. This provision is consistent with the definition of sale for resale set out in Tax Code, §151.006 and subsection (b) of this section. New paragraph (5) provides a cross-reference to §3.286 of this title to assist resellers located outside of Texas in obtaining information about their obligations under Texas law. New paragraph (6) memorial-

izes existing comptroller policy that a purchaser may not issue a resale certificate to purchase items for resale outside the United States or Mexico. Such sales do not fall within the definition of a sale for resale provided in subsection (b). Purchasers are directed to §3.323 of this title. Other minor changes to the wording of subsection (d) are made for readability and are not intended to change the meaning of the subsection.

Subsection (e) is amended by changing the heading from "Improper use of items purchased for resale" to "Taxable use of items purchased for resale; items removed from tax-free inventory." The information currently provided in this subsection is reorganized, additional headings are added, and the words "tangible personal property" and "tangible personal property or a taxable service" have been replaced, when appropriate, with the defined term "taxable item." Information regarding property used outside the state is moved to new paragraph (4). Paragraphs (2) through (4) of the current subsection are relettered as paragraph (1)(A), (B), and (C). Paragraphs (5) and (6) are renumbered accordingly. Other minor changes to the wording are intended to make the subsection easier to read, and are not intended to alter the meaning of the subsection.

New subsection (e)(4) addresses items that are used outside of Texas. New subsection (e)(5) memorializes comptroller policy, which is not reflected in the current section, that tax is not due on tangible personal property that is totally destroyed or permanently disposed of in a manner other than for use or sale in the normal course of business. See Comptroller's Decision No. 28,901 (1993) and STAR Accession No. 9606L1417A08 (June 10, 1996).

Subsection (f), concerning the improper use of a resale certificate, is amended by adding "criminal offenses" to the heading and replacing language relating to the specific criminal penalties with a reference to §3.305 of this title (relating to Criminal Offenses and Penalties).

Subsection (g), concerning the content of a resale certificate, is amended to delete the use of the term "permanent" in connection with a permit number issued by the comptroller, as the term is no longer used. Subsection (g)(2) is further amended to delete a reference to 11 digit Texas tax permit numbers beginning with the number 2, as such numbers no longer exist.

Subsection (h), concerning the proper form of a resale certificate, is amended to reflect that the comptroller will no longer adopt by reference the Texas Sales and Use Tax Resale Certificate or a Border States Uniform Sale for Resale Certificate; to update instructions for taxpayers to obtain a copy of a Texas resale certificate; and to advise taxpayers that a seller may accept the Uniform Sales and Use Tax Certificate-Multijurisdiction as a resale certificate, but may not accept the Streamlined Sales and Use Tax Agreement Certificate of Exemption.

The amendments are adopted under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), 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 amendments implement Tax Code, §§151.006, ("Sale for Resale"), 151.010 (Taxable Item), 151.011 ("Use" and "Storage"), 151.025 (Records Required to be Kept), 151.054 (Gross Receipts Presumed Subject to Tax), 151.058 (Property Used to Provide Taxable Services and Sales Price of Taxable Services), 151.104 (Sale for Storage, Use, or Consumption Presumed), 151.151 (Resale Certificate), 151.152 (Resale Certificate: Form), 151.154 (Resale Certificate: Liability of Purchaser), and 151.302 (Sales for Resale).

§3.285. Resale Certificate; Sales for Resale.

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

(1) Equipment--Any apparatus, device, or simple machine used to perform a service.

(2) Federal government--The government of the United States of America and its unincorporated agencies and instrumentalities, including all parts of the executive, legislative, and judicial branches and all independent boards, commissions, and agencies of the United States government unless otherwise designated in this section.

(3) Integral part--An essential element without which the whole would not be complete. One taxable item is an integral part of a second item if the taxable item is necessary, as opposed to desirable, for the completion of the second item, and if the second item could not be provided as a whole without the taxable item.

(4) Internet hosting service--The provision to an unrelated user of access over the Internet to computer services using property that is owned or leased and managed by the service provider and on which the unrelated user may store or process the user's own data or use software that is owned, licensed, or leased by the unrelated user or service provider. The term does not include telecommunications services as defined in §3.344 of this title (relating to Telecommunications Services).

(5) Machinery--All power-operated machines.

(6) Mexico--Within the geographical limits of the United Mexican States.

(7) Purchaser--A person who is in the business of selling, leasing, or renting taxable items.

(8) Seller--Every retailer, wholesaler, distributor, manufacturer, or any other person who sells, leases, rents, or transfers ownership of tangible personal property or performs taxable services in this state for consideration. Specific types of sellers, such as direct sales organizations, pawnbrokers, and auctioneers, are further defined 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).

(9) Taxable item--Tangible personal property and taxable services. Except as otherwise provided by Tax Code, Chapter 151, the sale or use of a taxable item in an electronic form instead of on physical media does not alter the item's tax status.

(10) Tax-free inventory--A stock of tangible personal property purchased tax-free for resale, whether from out-of-state or by issuing a properly completed resale certificate, by a purchaser who, at the time of purchase:

(A) holds a valid Texas sales and use tax permit;

(B) makes sales of taxable items in the regular course of business; and

(C) does not know whether the tangible personal property will be resold in the normal course of business or used in the performance of a service.

(11) United States--Within the geographical limits of the United States of America or within the territories and possessions of the United States of America.

(b) Sale for resale.

(1) Except as provided in paragraphs (3) - (6) of this subsection, each of the following is a sale for resale:

(A) the sale of a taxable item to a purchaser who acquires the taxable item for the purpose of reselling it with or as a taxable item in the United States or Mexico in the normal course of business:

(i) in the form or condition in which it is acquired; or

(ii) as an attachment to or as an integral part of another taxable item;

(B) the sale of tangible personal property to a purchaser who acquires the property for the sole purpose of leasing or renting it in the United States or Mexico in the normal course of business to another person, but not if incidental to the leasing or renting of real estate, as described in §3.294(k) of this title (relating to Rental and Lease of Tangible Personal Property);

(C) the sale of tangible personal property to a purchaser who acquires the property for the purpose of transferring the property to a customer in the United States or Mexico as an integral part of a taxable service;

(D) the sale of a taxable service performed on tangible personal property that the purchaser of the service holds for sale, lease, or rental;

(E) the sale of tangible personal property to a purchaser who acquires the tangible personal property for the purpose of transferring it as an integral part of performing a contract, or a subcontract of a contract, with the federal government only if the purchaser:

(i) allocates and bills to the contract the cost of the tangible personal property as a direct or indirect cost; and

(ii) transfers title to the tangible personal property to the federal government under the contract or subcontract and applicable federal acquisition regulations;

(F) the sale of a wireless voice communication device, such as a cellular telephone, to a purchaser who acquires the device for the purpose of transferring the device as an integral part of a taxable telecommunication service when the purchase of the service is a condition for receiving the device, regardless of whether there is a separate charge for the device or whether the purchaser is the provider of the taxable service. See §3.344 of this title (relating to Telecommunications Services) for information about telecommunication services); and

(G) the sale of a computer program to a provider of Internet hosting services who acquires the computer program from an unrelated vendor for the purpose of selling the right to use the computer program to an unrelated user of the provider's Internet hosting services in the normal course of business and in the form or condition in which the provider acquired the computer program, without regard to whether the provider transfers care, custody, and control of the computer program to the unrelated user. The performance by the provider of routine maintenance of the computer program that is recommended or required by the unrelated vendor of the computer program does not affect the application of this subsection. For purposes of this subsection, the purchase of the computer program by the provider qualifies as a sale for resale only if:

(i) the provider offers the unrelated user a selection of computer programs that are available to the public for purchase directly from an unrelated vendor;

(ii) the provider executes a written contract with the unrelated user that specifies the name of the computer program sold to the unrelated user and includes a charge to the unrelated user for computing hardware;

(iii) the unrelated user purchases the right to use the computer program from the provider through the acquisition of a license; and

(iv) the provider does not retain the right to use the computer program under that license.

(2) To qualify as a sale for resale, the taxable item must be acquired for the purpose of selling, leasing, or renting it in the regular course of business or for the purpose of transferring it as an integral part of a taxable service performed in the regular course of business.

(3) A sale for resale does not include the sale of internal or external wrapping, packing, or packaging supplies to a purchaser who acquires the supplies for use in wrapping, packing, or packaging tangible personal property, or in the performance of a service, for the purpose of furthering the sale of the tangible personal property or the service. See §3.314 of this title (relating to Wrapping, Packing, Packaging Supplies, Containers, Labels, Tags, Export Packers, and Stevedoring Materials and Supplies).

(4) A sale for resale does not include the sale of tangible personal property or a taxable service to a purchaser who acquires the property or service for the purpose of performing a service that is not taxed under this chapter, regardless of whether title transfers to the service provider's customer, unless the tangible personal property or taxable service is purchased for the purpose of reselling it to the United States in a contract, or a subcontract of a contract, with any branch of the Department of Defense, Department of Homeland Security, Department of Energy, National Aeronautics and Space Administration, Central Intelligence Agency, National Security Agency, National Oceanic and Atmospheric Administration, or National Reconnaissance Office to the extent allocated and billed to the contract with the federal government.

(5) A sale for resale does not include the sale of a taxable item to a purchaser who acquires the taxable item for the purpose of reselling or transferring the taxable item outside the territorial limits of the United States or Mexico. Refer to §3.323 of this title (relating to Imports and Exports).

(6) Tangible personal property used to perform a taxable service is not considered resold unless the care, custody, and control of the tangible personal property is transferred to the purchaser of the service. The care, custody, and control of tangible personal property is transferred to the purchaser of the service when the purchaser has primary possession of the tangible personal property.

(A) Except as provided in subparagraphs (B) and (C) of this paragraph, to have primary possession, the purchaser or the purchaser's designee must have:

(i) physical possession of the tangible personal property off of the premises of the service provider;

(ii) a contractual duty to care for the tangible personal property. At a minimum, the contract must prohibit the purchaser from damaging the tangible personal property or impose liability if the purchaser damages the tangible personal property; and

(iii) a superior right to use the tangible personal property for a contractually specified period of time.

(B) The purchaser may have primary possession of tangible personal property if the purchaser or the purchaser's designee has

physical possession of the tangible personal property and directly consumes the tangible personal property during the provision of the taxable service. Property is considered consumed if it can no longer be used for its intended purpose in the normal course of business or is not retained or reusable by the service provider.

(C) A purchaser may have primary possession of a computer program if the purchaser acquires a license to use the computer program from the service provider and the service provider does not retain the right to use the computer program under that license.

(7) A person performing services taxable under Tax Code, Chapter 151 is the consumer of machinery and equipment used by the person in performing the services. A person performing a taxable service is not using the machinery or equipment in performing the service if the person has transferred primary possession, as that term is described in paragraph (6) of this subsection, of the machinery or equipment to the purchaser of the service.

(8) Aircraft. See §3.280 of this title (relating to Aircraft) for the definition of "sale for resale" as it applies to aircraft.

(c) Issuance and acceptance of resale certificates.

(1) A sale for resale as defined in subsection (b) of this section is not taxable.

(2) Who may issue a resale certificate.

(A) In general, a purchaser who holds a Texas sales and use tax permit may issue a resale certificate instead of paying tax at the time of purchase of a taxable item that the purchaser intends to resell, lease, rent, or transfer as an integral part of a taxable service in the normal course of business. A purchaser may also issue a resale certificate instead of paying tax at the time of purchase of a taxable item that the purchaser intends to maintain in a valid tax-free inventory, if the purchaser does not know at the time of purchase whether the item will be resold or used in the performance of a service. The purchaser must collect, report, and remit tax to the comptroller as required by §3.286 of this title when the purchaser sells, leases, or rents taxable items.

(B) A purchaser may not issue a resale certificate in lieu of paying tax on the purchase of a taxable item, including tangible personal property to maintain in a valid tax-free inventory, that the purchaser knows, at the time of purchase, will be used or consumed by the purchaser.

(3) Accepting a resale certificate.

(A) All gross receipts of a seller are presumed subject to sales or use tax unless a properly completed resale or exemption certificate is accepted by the seller. A properly completed resale certificate contains the information required by subsection (g) of this section. See also §3.287 of this title (relating to Exemption Certificates).

(B) A seller does not owe tax on a sale, lease, or rental of a taxable item if the seller accepts a properly completed resale certificate in good faith. A resale certificate is deemed to be accepted in good faith if:

(i) the resale certificate is accepted at or before the time of the transaction;

(ii) the resale certificate is properly completed, meaning that all of the information required by subsection (g) of this section is legible; and

(iii) the seller does not know, and does not have reason to know, that the sale is not a sale for resale. It is the seller's responsibility to be familiar with Texas sales tax law as it applies to the seller's business and to take notice of the information provided by the purchaser on the resale certificate. For example, a jewelry seller should know that a resale certificate from a landscaping service is invalid because a landscaping service is not in the business of reselling jewelry.

(C) The seller should obtain a properly executed resale certificate at the time the taxable transaction occurs. All certificates obtained on or after the date the comptroller's auditor actually begins work on the audit at the seller's place of business or on the seller's records after the entrance conference are subject to verification. All incomplete certificates will be disallowed regardless of when they were obtained. The seller has 60 days from the date written notice is received by the seller from the comptroller in which to deliver the certificates to the comptroller. Written notice shall be given by the comptroller upon the filing of a petition for redetermination or claim for refund. For the purposes of this section, written notice given by mail is presumed to have been received by the seller within three business days from the date of deposit in the custody of the United States Postal Service. The seller may overcome the presumption by submitting proof from the United States Postal Service or by other competent evidence showing a later delivery date. Any certificates delivered to the comptroller during the 60-day period will be subject to independent verification by the comptroller before any deductions will be allowed. Certificates delivered after the 60-day period will not be accepted and the deduction will not be granted. See §3.282 of this title (relating to Auditing Taxpayer Records) and §3.286 of this title.

(D) Resale certificates are subject to the provisions of §3.281 of this title (relating to Records Required; Information Required). A seller is required to keep resale certificates for a minimum of four years from the date on which the sale is made and throughout any period in which any tax, penalty, or interest may be assessed, collected, or refunded by the comptroller or in which an administrative hearing or judicial proceeding is pending.

(4) Blanket resale certificate. A purchaser may issue to a seller a blanket resale certificate describing the general nature of the taxable items purchased for resale. The seller may rely on the blanket certificate until it is revoked in writing.

(5) Bulk commodities. A resale certificate is not required to be issued by a broker or dealer that buys and sells only raw commodities in bulk, such as natural gas, raw cotton bales, or raw aluminum, from producers or other commodity brokers or dealers solely for resale in the normal course of business. However, if requested by the seller, a properly completed resale certificate, absent a sales tax permit number, may be issued by the purchaser of such raw commodities even if the purchaser does not hold a sales and use tax permit.

(d) Retailers outside Texas.

(1) A seller in Texas may accept a resale certificate in lieu of tax from a retailer located outside Texas who purchases taxable items for resale in the United States or Mexico in a transaction that is a sale for resale, as defined in subsection (b) of this section.

(2) The resale certificate must show the signature and address of the purchaser, the date of the sale, the state in which the purchaser intends to resell the item, the sales tax permit number or the registration number assigned to the purchaser by the state in which the purchaser is authorized to do business or a statement that the purchaser is not required to be permitted in the state in which the purchaser is authorized to do business. Mexican retailers who purchase taxable items for resale must show their Federal Taxpayers Registry (RFC) identification number for Mexico on the resale certificate and give a copy of their Mexican Registration Form to the Texas seller. An invoice describing the taxable item purchased and showing the exact street address or office address from which the taxable item will be resold must

be attached to the resale certificate. The resale certificate must also state the type business engaged in by the purchaser and the type items sold in the regular course of business. A resale certificate may be accepted from the out-of-state retailer even if the Texas retailer ships or delivers the taxable item directly to a recipient located inside Texas.

(3) The Texas retailer is not responsible for determining whether the out-of-state retailer is required to hold a Texas sales and use tax permit or to enter a Texas permit number on the resale certificate.

(4) Foreign purchasers, other than purchasers from Mexico, who are not engaged in business in Texas and do not hold a Texas sales and use tax permit, may issue a properly completed resale certificate, as described in paragraph (2) of this subsection, in lieu of paying tax on the purchase of taxable items for sale in the normal course of business when the items are delivered or shipped to a location outside of Texas but within the United States or Mexico.

(5) An out-of-state or foreign purchaser who acquires goods or services from a Texas seller for resale in Texas should refer to §3.286 of this title for information on their responsibilities.

(6) A purchaser, whether from Texas, Mexico, or another foreign country, may not issue a resale certificate for taxable items purchased for resale outside the United States or Mexico. See subsection (b)(5) of this section. Purchasers who purchase taxable items in Texas for sale outside the United States or Mexico must comply with the requirements of §3.323 of this title to claim exemption from the Texas sales tax.

(e) Taxable use of items purchased for resale; items removed from tax-free inventory.

(1) Divergent use; paying tax on fair market rental value. When a taxable item is removed from a valid tax-free inventory for use in Texas, Texas sales tax is due. When a taxable item purchased under a resale certificate is used for any purpose other than retention, demonstration, or display while holding it for sale, lease, or rental, or for transfer as an integral part of a taxable service, the purchaser is liable for sales tax based on the value of the taxable item for the period of time used.

(A) The value of tangible personal property is the fair market rental value of the tangible personal property. The fair market rental value is the amount that a purchaser would pay on the open market to rent or lease the tangible personal property for use. If tangible personal property has no fair market rental value, sales tax is due based upon the original purchase price.

(B) The value of a taxable service is the fair market value of the taxable service. The fair market value is the amount that a purchaser would pay on the open market to obtain that taxable service. If a taxable service has no fair market value, sales tax is due based upon the original purchase price.

(C) At any time the person using a taxable item may stop paying tax on the value of the taxable item and instead pay sales tax on the original purchase price. When the person elects to pay sales tax on the original purchase price, credit will not be allowed for taxes previously paid based on value.

(2) Donation of taxable item. A purchaser who gives a valid resale certificate instead of paying tax on the purchase of a taxable item is not liable for sales tax on the taxable item when donated to an organization exempt under Tax Code, §151.309 (Governmental Entities), or §151.310(a)(1) and (2) (Religious, Educational, And Public Service Organizations), provided the purchaser did not make a taxable use of the donated taxable item prior to its donation.

(3) Use of taxable item as a trade-in. A purchaser who gives a valid resale certificate instead of paying tax on the purchase of a taxable item is liable for sales tax if the purchaser uses the taxable item as a trade-in on the purchase of another taxable item. Tax must be paid on the original purchase price of the taxable item used as a trade-in.

(4) Use of taxable item outside Texas. Texas sales or use tax is not due on a taxable item removed from a valid tax-free inventory for use by the purchaser outside the state.

(5) Lost or destroyed inventory. Texas sales or use tax is not due on tangible personal property purchased under a valid resale certificate that is totally destroyed or permanently disposed of by the purchaser in a manner other than for use or sale in the normal course of business. For example, documented theft, casualty damage or loss, or disposal in a landfill. This does not apply to consumable items that are completely used up or destroyed by the purchaser in the course of performing a service in Texas.

(f) Improper use of a resale certificate; criminal offenses.

(1) A person may not issue a resale certificate at the time of purchase for a taxable item if the person knows the item is being purchased for a specific taxable use.

(2) Any person who intentionally or knowingly makes, presents, uses, or alters a resale certificate for the purpose of evading Texas sales or use tax is guilty of a criminal offense. For more information, see §3.305 of this title (relating to Criminal Offenses and Penalties).

(g) Content of a resale certificate. A resale certificate must show:

(1) the name and address of the purchaser;

(2) the number from the sales tax permit held by the purchaser or a statement that an application for a permit is pending before the comptroller with the date the application for a permit was made. If the application is pending, the resale certificate is valid for only 60 days, after which time the resale certificate must be renewed to show the permanent permit number. If the purchaser holds a Texas sales and use tax permit, the number must consist of 11 digits that begin with a 1 or 3. Federal employer's identification (FEI) numbers or social security numbers are not acceptable evidence of resale. See also subsection (d)(2) of this section regarding registration numbers for retailers outside Texas;

(3) a description of the taxable items generally sold, leased, or rented by the purchaser in the regular course of business and a description of the taxable items to be purchased tax free by use of the certificate. The item to be purchased may be generally described on the certificate or itemized in an order or invoice attached to the certificate;

(4) the signature of the purchaser or an electronic form of the purchaser's signature authorized by the comptroller and the date; and

(5) the name and address of the seller.

(h) Form of a resale certificate. A resale certificate must be substantially either in the form of a Texas Sales and Use Tax Resale Certificate or a Border States Uniform Sale for Resale Certificate. Copies of both certificates are available at comptroller.texas.gov or may be obtained by calling our toll-free number 1-800-252-5555. A seller may also accept as a resale certificate the Uniform Sales and Use Tax Certificate-Multijurisdiction promulgated by the Multistate Tax Commission and available online at http://www.mtc.gov. The

Streamlined Sales and Use Tax Agreement Certificate of Exemption may not be accepted as a resale certificate.

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 October 12, 2017.

TRD-201704094
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Effective date: November 1, 2017
Proposal publication date: May 12, 2017
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER C. EXAMINATION REQUIREMENTS

37 TAC §15.61

The Texas Department of Public Safety (the department) adopts amendments to §15.61, concerning Third Party Skills Testing. This rule is adopted without changes to the proposed text as published in the September 8, 2017, issue of the *Texas Register* (42 TexReg 4585) and will not be republished.

Texas Transportation Code, §521.165 authorizes the department to permit third parties to administer the skills test for a driver license on the department's behalf. The amendments update language to reflect the change in driver education program administration from Texas Education Agency (TEA) to the Texas Department of Licensing and Regulation (TDLR). The amendments also reduce the amount of time an authorized organization or instructor must have been licensed in order to participate in the Third Party Skills Testing (TPST) program and clarify that qualifying successor in interest ownership changes will not prevent program participation.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.165, which authorizes the department to delegate skills testing to other entities.

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 October 13, 2017.

TRD-201704105
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: November 2, 2017
Proposal publication date: September 8, 2017
For further information, please call: (512) 424-5848

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SUBCHAPTER I. RELEASE OF DRIVER RECORD INFORMATION

37 TAC §15.142

The Texas Department of Public Safety (the department) adopts amendments to §15.142, concerning Agreement to Monitor Certain Records and Purchase Driver Record Information. This rule is adopted without changes to the proposed text as published in the September 8, 2017, issue of the *Texas Register* (42 TexReg 4586) and will not be republished.

These amendments are necessary to conform to changes made by the 85th Legislative Session, HB 1699 to Texas Transportation Code, §521.062 regarding program qualifications.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.062, which authorizes the department to conduct a pilot program to provide driver record monitoring services.

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 October 13, 2017.

TRD-201704106
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: November 2, 2017
Proposal publication date: September 8, 2017
For further information, please call: (512) 424-5848

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CHAPTER 23. VEHICLE INSPECTION
SUBCHAPTER D. VEHICLE INSPECTION ITEMS, PROCEDURES, AND REQUIREMENTS

37 TAC §23.41, §23.42

The Texas Department of Public Safety (the department) adopts amendments to §23.41 and §23.42, concerning Vehicle Inspection Items, Procedures, and Requirements. These rules are adopted without changes to the proposed text as published in the September 8, 2017, issue of the *Texas Register* (42 TexReg 4587) and will not be republished.

The amendments reflect changes to the attached graphics necessitated by 85th Legislative Session, S.B. 1001. The bill

raises the inspection exemption weight limit for trailers from 4,500 pounds to 7,500 pounds, requiring amendment to the attached graphics' inspection guidelines. The proposed amendments also include general updates and additional cleanup of language required by Transportation Code, Chapter 548.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

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 October 13, 2017.

TRD-201704107
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: November 2, 2017
Proposal publication date: September 8, 2017
For further information, please call: (512) 424-5848

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CHAPTER 36. METALS RECYCLING ENTITIES
SUBCHAPTER B. CERTIFICATE OF REGISTRATION

37 TAC §36.16

The Texas Department of Public Safety (the department) adopts amendments to §36.16, concerning Renewal of Certificate of Registration. This rule is adopted without changes to the proposed text as published in the September 8, 2017, issue of the *Texas Register* (42 TexReg 4589) and will not be republished.

This amendment is necessary to clarify the authority of the department to deny an application for renewal if the applicant is found to have been operating with an expired certificate of registration.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1956.013, which authorizes the commission to adopt rules to administer 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 October 13, 2017.

TRD-201704110
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: November 2, 2017
Proposal publication date: September 8, 2017
For further information, please call: (512) 424-5848

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SUBCHAPTER C. PRACTICE BY CERTIFICATE HOLDERS AND REPORTING REQUIREMENTS

37 TAC §36.31, §36.36

The Texas Department of Public Safety (the department) adopts amendments to §36.31 and §36.36, concerning Practice by Certificate Holders and Reporting Requirements. These rules are adopted without changes to the proposed text as published in the September 8, 2017, issue of the *Texas Register* (42 TexReg 4589) and will not be republished.

These amendments are necessary to implement the requirements of 85th Legislative Session, S.B. 208.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1956.013, which authorizes the commission to adopt rules to administer 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 October 13, 2017.

TRD-201704109
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: November 2, 2017
Proposal publication date: September 8, 2017
For further information, please call: (512) 424-5848

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SUBCHAPTER E DISCIPLINARY PROCEDURES AND ADMINISTRATIVE PROCEDURES

37 TAC §§36.52, 36.56, 36.60

The Texas Department of Public Safety (the department) adopts amendments to §§36.52, 36.56, and 36.60, concerning Disciplinary Procedures and Administrative Procedures. These rules are adopted without changes to the proposed text as published in the September 8, 2017, issue of the *Texas Register* (42 TexReg 4590) and will not be republished.

These amendments are necessary to implement the requirements of the 85th Legislative Session, SB 208, which expand the conduct for which the department may impose an administrative penalty against a person and require the department adopt by rule a standardized penalty schedule.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Occupations Code, §1956.013, which authorizes the commission to adopt rules to administer Chapter 1956, and Texas Occupations Code, §1956.041, which requires that the commission adopt rules establishing a standardized penalty schedule for certain violations of the statute or 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 October 13, 2017.

TRD-201704111
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: November 2, 2017
Proposal publication date: September 8, 2017
For further information, please call: (512) 424-5848


TEXAS

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 Workforce Commission

Title 40, Part 20

CHAPTER 805. ADULT EDUCATION AND LITERACY

The Texas Workforce Commission (TWC) files this notice of its intent to review Chapter 805, Adult Education and Literacy, in accordance with Texas Government Code §2001.039.

An assessment will be made by TWC as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of TWC.

Comments on the review may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. TWC must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

CHAPTER 811. CHOICES

The Texas Workforce Commission (TWC) files this notice of its intent to review Chapter 811, Choices, in accordance with Texas Government Code §2001.039.

An assessment will be made by TWC as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of TWC.

Comments on the review may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. TWC must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

CHAPTER 835. SELF-SUFFICIENCY FUND

The Texas Workforce Commission (TWC) files this notice of its intent to review Chapter 835, Self-Sufficiency Fund, in accordance with Texas Government Code §2001.039.

An assessment will be made by TWC as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of TWC.

Comments on the review may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. TWC must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

CHAPTER 841. WORKFORCE INVESTMENT ACT

The Texas Workforce Commission (TWC) files this notice of its intent to review Chapter 841, Workforce Investment Act, in accordance with Texas Government Code §2001.039.

An assessment will be made by TWC as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of TWC.

Comments on the review may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. TWC must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

CHAPTER 847. PROJECT RIO EMPLOYMENT ACTIVITIES AND SUPPORT SERVICES

The Texas Workforce Commission (TWC) files this notice of its intent to review Chapter 847, Project RIO Employment Activities and Support Services, in accordance with Texas Government Code §2001.039.

An assessment will be made by TWC as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of TWC.

Comments on the review may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. TWC must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

CHAPTER 849. EMPLOYMENT AND TRAINING SERVICES FOR DISLOCATED WORKERS ELIGIBLE FOR TRADE BENEFITS

The Texas Workforce Commission (TWC) files this notice of its intent to review Chapter 849, Employment and Training Services for Dislocated Workers Eligible for Trade Benefits, in accordance with Texas Government Code §2001.039.

An assessment will be made by TWC as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of TWC.

Comments on the review may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. TWC must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

TRD-201704170
Patricia Gonzalez
Deputy Director, Workforce Development
Texas Workforce Commission
Filed: October 17, 2017

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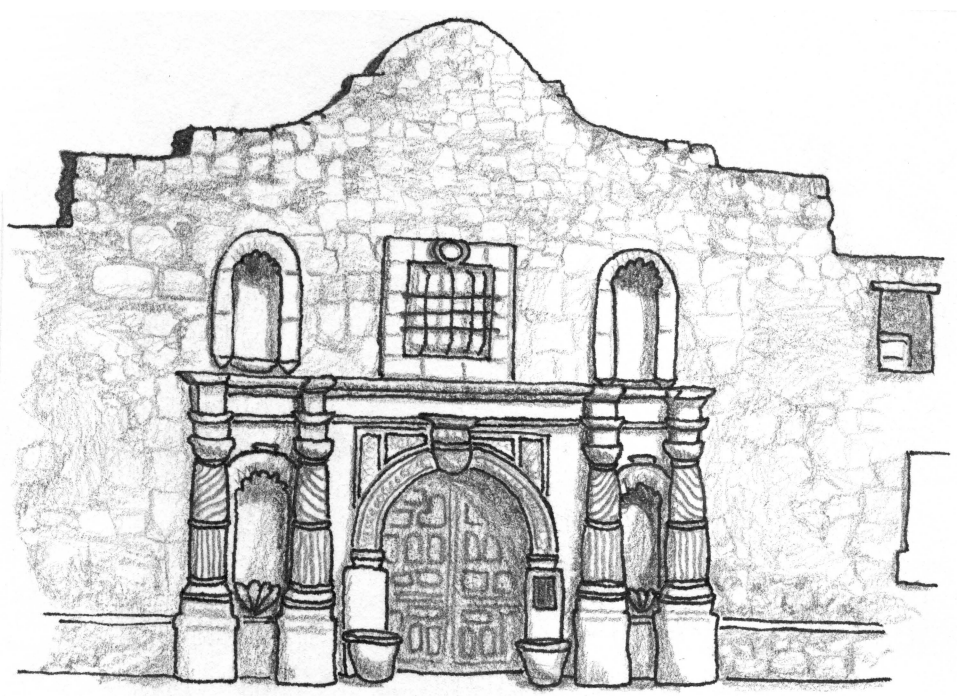
Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

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: 37 TAC §6.90(a)

Penalty Schedule – Approved Online Course Providers

Violation Type	**1st**	**2nd**	**3rd**	**4th or more**
Records	Warning	1 mo. Suspension	3 mo. Suspension	12 mo. Suspension/Revocation
Curriculum	Warning	1 mo. Suspension	6 mo. Suspension	12 mo. Suspension/Revocation
Testing	Warning	1 mo. Suspension	6 mo. Suspension	12 mo. Suspension/Revocation



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Capital Area Rural Transportation System

Public Notice - RFP

Capital Area Rural Transportation System (CARTS) is soliciting proposals for the selection of a Certified Public Accounting Firm to provide professional services for the Annual A-133 Audit.

The RFP will be available in digital format beginning at 5:00 p.m., Friday, October 13, 2017 on our website at http://www.ridecarts.com/about/procurement or a copy can be picked up at the CARTS Headquarters at 2010 E 6th, Austin, Texas 78702-6050.

The schedule is:

Release of RFP - October 13, 2017

Deadline for Written Questions - October 27, 2017

Responses to questions posted - November 3, 2017

Response Due Date - November 14, 2017

Proposals will be evaluated on qualifications, experience, and the quality and content of the submittal.

TRD-201704093
David Marsh
General Manager
Capital Area Rural Transportation System
Filed: October 12, 2017

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/23/17 - 10/29/17 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/23/17 - 10/29/17 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201704169
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 17, 2017

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is November 27, 2017. 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 November 27, 2017. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: 525 Atrium, L.P.; DOCKET NUMBER: 2017-0902-PST-E; IDENTIFIER: RN101572899; LOCATION: Farmers Branch, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and an emergency generator; RULE VIOLATED: 30 TAC §334.8(c)(4)(B), by failing to ensure the UST registration and self-certification form was fully and accurately completed, and submitted to the TCEQ within 30 days after changing operational status; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: AIR PRODUCTS LLC; DOCKET NUMBER: 2016-1983-IHW-E; IDENTIFIER: RN102041282; LOCATION: La Porte, Harris County; TYPE OF FACILITY: produces industrial gases; RULE VIOLATED: 30 TAC §335.43, by failing to cause, suffer, allow, or permit the shipment of industrial and hazardous waste to an unauthorized facility; PENALTY: $8,925; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Behrous Zamani dba Lucky Way Food Store; DOCKET NUMBER: 2016-1365-PST-E; IDENTIFIER: RN102237385; LOCATION: Galveston, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline;

RULES VIOLATED: 30 TAC §334.10(b), by failing to maintain underground storage tank (UST) records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; 30 TAC §334.45(c)(3)(A), by failing to install a secure anchor at the base of the dispenser in each pressurized delivery or product line, an Underwriters Laboratory, Incorporated listed emergency shutoff valve in piping systems in which regulated substances are conveyed under pressure to an aboveground dispensing unit; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; and 30 TAC §334.48(a) and (b), by failing to ensure that the UST systems are operated, maintained, and managed in a manner that will prevent releases of regulated substances; PENALTY: $16,846; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: City of Center; DOCKET NUMBER: 2016-2028-PWS-E; IDENTIFIER: RN101390409; LOCATION: Center, Shelby County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(B)(iv), by failing to maintain water works operation and maintenance records and make them available for review to the executive director (ED) during the investigation; 30 TAC §290.42(d)(2)(C), by failing to provide make-up water supply lines to chemical feeder solution mixing chambers with an air gap or other acceptable backflow prevention device; 30 TAC §290.41(e)(2)(B), by failing to locate raw water intakes greater than 1,000 feet from boat launching ramps, marinas, docks, or floating fishing piers which are accessible by the public; 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of total chlorine throughout the distribution system at all times; 30 TAC §290.44(h)(4), by failing to have all backflow prevention assemblies tested upon installation and on an annual basis by a recognized backflow assembly tester and certify that they are operating within specifications; 30 TAC §290.44(h)(4)(C), by failing to properly complete a test report by the recognized backflow prevention assembly tester for each assembly tested and on a form approved by the ED; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; 30 TAC §290.110(c)(4)(C), by failing to monitor the disinfectant residuals at least once per day at representative locations in the distribution system; 30 TAC §290.111(f)(3)(D), by failing to design the recorder so that the operator can accurately determine the value of the readings at the monitoring interval approved by the ED; 30 TAC §290.111(h), by failing to properly complete a Surface Water Monthly Operating Report; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.42(d)(13), by failing to identify the influent, effluent, waste backwash, and chemical feed lines by the use of labels or various colors of paint; 30 TAC §290.42(f)(1)(E)(ii), by failing to provide adequate containment facilities for all liquid chemical storage tanks; 30 TAC §290.46(v), by failing to ensure that all electrical wiring is securely installed in compliance with a local or national electrical code; 30 TAC §290.41(e)(2)(C), by failing to establish a restricted zone of 200 feet radius from the raw water intake works prohibiting all recreational activities and trespassing, designated with signs recounting these restrictions; 30 TAC §290.42(d)(2)(A), by failing to provide a vacuum breaker on each hose bibb within the plant facility; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; 30 TAC §290.43(c)(3), by failing to ensure that the discharge opening of the overflow is above the surface of the ground and not subject to submergence; 30 TAC §290.43(e), by failing to enclose all water storage tanks and pressure maintenance facilities by an intruder-resistant fence with the gates kept locked whenever the plant is unattended; and 30 TAC §290.43(c)(1), by failing to equip the facility's ground storage tank roof vent with a 16-mesh or finer corrosion-resistant screen to prevent entry of animals, birds, insects, and heavy air contaminants; PENALTY: $6,296; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: City of Del Rio; DOCKET NUMBER: 2017-1077-AIR-E; IDENTIFIER: RN102143294; LOCATION: Del Rio, Val Verde County; TYPE OF FACILITY: municipal solid waste landfill; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O3803/General Operating Permit Number 518, Terms and Conditions Number (b)(3)(D), and Texas Health and Safety Code, §382.085(b), by failing to submit a Permit Compliance Certification no later than 30 days after the end of the certification period; PENALTY: $1,625; ENFORCEMENT COORDINATOR: Ariel Ramirez, (512) 239-4935; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(6) COMPANY: City of Elkhart; DOCKET NUMBER: 2017-0709-PWS-E; IDENTIFIER: RN101400877; LOCATION: Elkhart, Anderson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(d)(2)(A), (h), and (i)(2), by failing to collect one lead and copper sample from each of the facility's entry points no later than 180 days after the end of the January 1, 2016 - December 31, 2016, monitoring period during which a lead and copper action level was exceeded, have the samples analyzed, and report the results to the executive director (ED); 30 TAC §290.117(f)(3)(A), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2016 - December 31, 2016, monitoring period during which a lead and copper action level was exceeded; 30 TAC §290.117(g)(2)(A), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2016 - December 31, 2016, monitoring period during which a lead and copper action level was exceeded; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect one raw groundwater source *Escherichia coli* sample from all active sources during the months of April of 2015; PENALTY: $411; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: Hill Country Rim Rock Estate, LLC; DOCKET NUMBER: 2017-1256-EAQ-E; IDENTIFIER: RN109760918; LOCATION: San Marcos, Hays County; TYPE OF FACILITY: residential site; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $938; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(8) COMPANY: HIMCHULI INTERNATIONAL LLC dba Easy Mart; DOCKET NUMBER: 2017-0551-PST-E; IDENTIFIER: RN102517489; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; and 30 TAC §334.50(d)(9)(A)(v) and §334.72, by failing to report a suspected release to the TCEQ within 72 hours of discovery; PENALTY: $3,563; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Kenneth Dupuis dba Dupuis Chevron; DOCKET NUMBER: 2016-1343-PST-E; IDENTIFIER: RN101778025; LOCATION: Bridge City, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; 30 TAC §334.605(a), by failing to ensure that a certified Class A and Class B Operator is re-trained within three years of their last training date; and 30 TAC §334.48(a) and (b), by failing to ensure that the underground storage tank system is operated, maintained, and managed in a manner that will prevent releases of regulated substances and in accordance with accepted industry practices; PENALTY: $41,349; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: KM Liquids Terminals LLC; DOCKET NUMBER: 2016-1415-AIR-E; IDENTIFIER: RN100237452; LOCATION: Galena Park, Harris County; TYPE OF FACILITY: bulk liquid storage terminal; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O988, Special Terms and Conditions Number 19, and New Source Review Permit Number 2193, Special Conditions Number 1, by failing to comply with the permitted hourly emissions rate; PENALTY: $13,500; Supplemental Environmental Project offset amount of $5,400; ENFORCEMENT COORDINATOR: Shelby Orme, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Lone Star NGL Fractionators LLC; DOCKET NUMBER: 2017-0761-AIR-E; IDENTIFIER: RN106018260; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §§116.115(b)(2)(F), 116.615(2), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O3586, Special Terms and Conditions Number 11.B, and Standard Permit Registration Number 93813, by failing to comply with the maximum emissions rates for the Flare, Emission Point Number 1SK25.001; and 30 TAC §122.143(4) and §122.145(2)(A), THSC, §382.085(b), and FOP Number O3586, General Terms and Conditions, by failing to report all instances of deviations; PENALTY: $158,950; Supplemental Environmental Project offset amount of $63,580; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: MIDTEX OIL, L.P.; DOCKET NUMBER: 2017-0971-PST-E; IDENTIFIER: RN102374279; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to deposit a regulated substance into a regulated underground storage tank system that was not covered by a valid, current TCEQ delivery certificate; PENALTY: $1,230; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: MILITARY HIGHWAY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2017-0845-PWS-E; IDENTIFIER: RN101258515; LOCATION: Los Indios, Cameron 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: $1,458; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(14) COMPANY: MOORE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2017-0652-PWS-E; IDENTIFIER: RN101234417; LOCATION: Moore, Frio County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(h)(1)(A), by failing to install the appropriate backflow prevention assemblies or an air gap at all residences or establishments where an actual or potential contamination hazard exists; PENALTY: $787; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: NORTH ORANGE WATER AND SEWER, LLC; DOCKET NUMBER: 2016-2008-PWS-E; IDENTIFIER: RN102078896; LOCATION: Orange, Orange County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(f)(1)(A)(ii) and (i)(7), by failing to perform and submit a corrosion control study to identify optimal corrosion control treatment for the system within 12 months after the end of the January 1, 2014 - December 31, 2014, monitoring period in which the system first exceeded the lead action level; and 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites that were tested, and failing to mail a copy of the consumer notification of tap results to the executive director along with certification that the consumer notification has been distributed for the July 1, 2015 - December 31, 2015, and January 1, 2016 - June 30, 2016, monitoring periods; PENALTY: $300; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: Port Mansfield Public Utility District; DOCKET NUMBER: 2017-0954-PWS-E; IDENTIFIER: RN101454205; LOCATION: Port Mansfield, Willacy County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and §290.122(b)(3)(A) and (f) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum containment level (MCL) of 0.080 milligrams per liter for trihalomethanes (TTHM), based on the locational running annual average and failing to provide public notification regarding the failure to comply with the MCL for TTHM; PENALTY: $160; ENFORCEMENT COORDINATOR: Caleb Olson, (512) 239-2541; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(17) COMPANY: Regal-Beloit Corporation; DOCKET NUMBER: 2016-1726-AIR-E; IDENTIFIER: RN105975080; LOCATION: McAllen, Hildago County; TYPE OF FACILITY: aluminum manufacturing plant; RULES VIOLATED: 30 TAC §122.146(1) and (2) and §122.143(4), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O3691, General Terms and Conditions, by failing to certify for at least each 12-month period following initial permit issuance and submit the Permit Compliance Certification within

30 days after the end of the certification period; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Shelby Orme, (512) 239-4575; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(18) COMPANY: SHIV OMKARA INCORPORATED dba Bulldog Express Mart; DOCKET NUMBER: 2016-1871-PST-E; IDENTIFIER: RN102241023; LOCATION: Boling, Wharton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: SOUTHVIEW BAPTIST CHURCH; DOCKET NUMBER: 2017-0360-PWS-E; IDENTIFIER: RN105707863; LOCATION: Rosharon, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(e)(2), (h), and (i)(3) and §290.122(c)(2)(A) and (f) and 40 Code of Federal Regulations §141.87 and §141.90(a), by failing to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample sites for two consecutive six-month periods following the July 1, 2015 - December 31, 2015, monitoring period during which the copper action level was exceeded, have the samples analyzed, and report the results to the executive director (ED), and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to conduct all of the required water quality parameter sampling during the January 1, 2016 - June 30, 2016, monitoring period; 30 TAC §290.117(d)(2)(A), (h), and (i)(2), by failing to collect one lead and copper sample from each of the facility's entry points no later than 180 days after the end of the July 1, 2015 - December 31, 2015, monitoring period during which the copper action level was exceeded, have the samples analyzed, and report the results to the ED; 30 TAC §290.117(f)(1)(A)(ii) and (i)(7), by failing to perform and submit a corrosion control study to identify optimal corrosion control treatment for the system within 12 months after the end of the July 1, 2015 - December 31, 2015, monitoring period in which the system first exceeded the copper action level; 30 TAC §290.117(f)(3)(A), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the July 1, 2015 - December 31, 2015, monitoring period during which the copper action level was exceeded; 30 TAC §290.117(g)(2)(A), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the July 1, 2015 - December 31, 2015, monitoring period during which the copper action level was exceeded; and 30 TAC §290.122(c)(2)(A) and (f), by failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the July 1, 2014 - December 31, 2014, January 1, 2015 - June 30, 2015, and January 1, 2016 - June 30, 2016, monitoring periods; PENALTY: $1,087; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: Tiseo Paving Company; DOCKET NUMBER: 2017-0984-WQ-E; IDENTIFIER: RN109781302; LOCATION: Waxahachie, Ellis County; TYPE OF FACILITY: construction site; RULES VIOLATED: TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of pollutants into or adjacent to any water in the state; and TWC, §26.039(b) and 30 TAC §327.3(b), by failing to notify the agency as soon as possible but not later than 24 hours after the discovery of a spill or discharge; PENALTY: $6,875; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: TPC Group LLC; DOCKET NUMBER: 2016-1665-AIR-E; IDENTIFIER: RN100219526; LOCATION: Houston, Harris County; TYPE OF FACILITY: refinery; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1598, Special Terms and Conditions Numbers 1.A and 26, and New Source Review Permit Number 46307, Special Conditions Number 19.A, by failing to control all loading of polyisobutylene by the vapor recovery system; PENALTY: $13,950; Supplemental Environmental Project offset amount of $5,580; ENFORCEMENT COORDINATOR: Shelby Orme, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: Trinity River Authority of Texas; DOCKET NUMBER: 2017-1120-MWD-E; IDENTIFIER: RN102806353; LOCATION: Red Oak, Ellis County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013415001, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of wastewater into or adjacent to any water in the state; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: TYSON FARMS, INCORPORATED; DOCKET NUMBER: 2017-0725-IWD-E; IDENTIFIER: RN101514636; LOCATION: Center, Shelby County; TYPE OF FACILITY: poultry processing facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0002064000, Effluent Limitations and Monitoring Requirements Number 1, Outfall Numbers 001 and 002, by failing to comply with permitted effluent limitations; PENALTY: $80,850; Supplemental Environmental Project offset amount of $40,425; ENFORCEMENT COORDINATOR: Claudia Corrales, (432) 620-6138; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(24) COMPANY: William Emmett Hartzog, Jr. dba Lone Willow MHP-West; DOCKET NUMBER: 2017-0711-PWS-E; IDENTIFIER: RN107205809; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(f)(3)(A), by failing to submit a recommendation to the executive director (ED) for optimal corrosion control treatment within six months after the end of the January 1, 2014 - December 31, 2016, monitoring period during which the lead action level was exceeded; 30 TAC §290.117(g)(2)(A), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2014 - December 31, 2016, monitoring period during which the lead action level was exceeded; and 30 TAC §290.122(b)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to deliver the public education materials following the lead action level exceedance which occurred during the January 1, 2014 - December 31, 2016, monitoring period; PENALTY: $165; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(25) COMPANY: Wilsonart LLC; DOCKET NUMBER: 2017-1063-AIR-E; IDENTIFIER: RN100215631; LOCATION: Temple, Bell County; TYPE OF FACILITY: a laminate manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(2), 113.1130, and 122.143(4), Special Conditions Number 5, Federal Operating Permit Number O1022, Special Terms and Conditions Number 5, 40 Code of Federal Regulations §63.7500(a)(1), and Texas Health and Safety Code, §382.085(b), by failing to comply with the emissions limit for the Hurst

Sander Boiler, Emission Point Number E11; PENALTY: $22,500; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-201704167
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 17, 2017

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Enforcement Orders

An agreed order was adopted regarding Plainview BioEnergy, LLC, Docket No. 2016-0569-PWS-E on October 17, 2017, assessing $1,313 in administrative penalties with $262 deferred. Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding COMMUNITY WATER SERVICE, INC., Docket No. 2016-1947-PWS-E on October 17, 2017, assessing $1,840 in administrative penalties with $368 deferred. Information concerning any aspect of this order may be obtained by contacting James Fisher, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding The Chemours Company FC, LLC, Docket No. 2017-0303-AIR-E on October 17, 2017, assessing $2,963 in administrative penalties with $592 deferred. Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GE Packaged Power, Inc., Docket No. 2017-0353-AIR-E on October 17, 2017, assessing $4,725 in administrative penalties with $945 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Department of Transportation, Docket No. 2017-0356-PWS-E on October 17, 2017, assessing $930 in administrative penalties with $185 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Edmonson, Docket No. 2017-0394-PWS-E on October 17, 2017, assessing $700 in administrative penalties with $140 deferred. Information concerning any aspect of this order may be obtained by contacting James Fisher, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Rio Hondo, Docket No. 2017-0395-PWS-E on October 17, 2017, assessing $967 in administrative penalties with $193 deferred. Information concerning any aspect of this order may be obtained by contacting Sarah Kim, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Valeria Lynn Raub dba Cypress Gardens Mobile Home Subdivision, Docket No. 2017-0396-PWS-E on October 17, 2017, assessing $1,969 in administrative penalties with $393 deferred. Information concerning any aspect of this order may be obtained by contacting James Fisher, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HEAVENIN, INC. dba Manor Grocery, Docket No. 2017-0400-PST-E on October 17, 2017, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Shepherd, Docket No. 2017-0409-MWD-E on October 17, 2017, assessing $3,175 in administrative penalties with $635 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Triple C Concrete of Lubbock, Ltd, Docket No. 2017-0442-AIR-E on October 17, 2017, assessing $1,125 in administrative penalties with $225 deferred. Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MISSION INDEV, LLC, Docket No. 2017-0455-PWS-E on October 17, 2017, assessing $1,451 in administrative penalties with $290 deferred. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Menard County, Docket No. 2017-0470-MLM-E on October 17, 2017, assessing $3,038 in administrative penalties with $607 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SAMBHAV INVESTMENT INC dba Bay City Shell, Docket No. 2017-0482-PST-E on October 17, 2017, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lamar State College-Orange, Docket No. 2017-0492-PWS-E on October 17, 2017, assessing $500 in administrative penalties with $100 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ramiro Munoz dba Blue Shadow Village MH Park, Docket No. 2017-0508-PWS-E on October 17, 2017, assessing $896 in administrative penalties with $179 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MELROSE WATER SUPPLY CORPORATION, Docket No. 2017-0509-PWS-E on October 17,

2017, assessing $2,286 in administrative penalties with $457 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Odem, Docket No. 2017-0594-PWS-E on October 17, 2017, assessing $825 in administrative penalties with $165 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GREEN CREEK WATER SUPPLY CORPORATION, Docket No. 2017-0599-PWS-E on October 17, 2017, assessing $571 in administrative penalties with $114 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding EVEREST VIEW CORPORATION dba Quick Track 8, Docket No. 2017-0619-PST-E on October 17, 2017, assessing $2,438 in administrative penalties with $487 deferred. Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Liquid Environmental Solutions of Texas, LLC, Docket No. 2017-0642-MSW-E on October 17, 2017, assessing $1,250 in administrative penalties with $250 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Waller, Docket No. 2017-0649-PWS-E on October 17, 2017, assessing $480 in administrative penalties with $96 deferred. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Grandview, Docket No. 2017-0655-MWD-E on October 17, 2017, assessing $1,562 in administrative penalties with $312 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PRITCHETT WATER SUPPLY CORPORATION, Docket No. 2017-0677-PWS-E on October 17, 2017, assessing $306 in administrative penalties with $61 deferred. Information concerning any aspect of this order may be obtained by contacting Sarah Kim, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ali's Market, Inc., Docket No. 2017-0697-PST-E on October 17, 2017, assessing $4,500 in administrative penalties with $900 deferred. Information concerning any aspect of this order may be obtained by contacting John Paul Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding United Skates Inc., Docket No. 2017-0722-PWS-E on October 17, 2017, assessing $100 in administrative penalties with $20 deferred. Information concerning any aspect of this order may be obtained by contacting Sandra Douglas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MEHAR ENTERPRISES, LLC dba Brookeland Country Mart, Docket No. 2017-0810-PST-E on October 17, 2017, assessing $3,563 in administrative penalties with $712 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Scott L. Newland, Docket No. 2017-0834-WQ-E on October 17, 2017, assessing $2,126 in administrative penalties with $425 deferred. Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KCWS II, Inc., Clark Thomas Winslow, and Kathryn Smith Winslow, Docket No. 2016-0074-PST-E on October 18, 2017, assessing $18,687 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Elizabeth Harkrider, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Paducah, Docket No. 2016-0216-PWS-E on October 18, 2017, assessing $990 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Audrey Liter, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Gurudwara Sahib of Houston Inc., Docket No. 2016-1008-PWS-E on October 18, 2017, assessing $3,060 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Brandon Cameron, Docket No. 2016-1486-OSI-E on October 18, 2017, assessing $1,619 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding 242 Express, Inc. dba Grapeland Express, Docket No. 2016-1628-PST-E on October 18, 2017, assessing $3,877 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Oxy Vinyls, LP, Docket No. 2016-2142-IWD-E on October 18, 2017, assessing $11,587 in administrative penalties with $2,317 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Total Petrochemicals & Refining Usa, Inc., Docket No. 2017-0056-AIR-E on October 18, 2017, assessing $25,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Trinity Bay Conservation District, Docket No. 2017-0082-MWD-E on October 18, 2017, assessing $8,750 in administrative penalties with $1,750 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Liberty Utilities (Woodmark Sewer) Corp., Docket No. 2017-0119-WQ-E on October 18, 2017, assessing $22,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Total Petrochemicals & Refining Usa, Inc., Docket No. 2017-0147-AIR-E on October 18, 2017, assessing $19,689 in administrative penalties with $3,937 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Ector, Docket No. 2017-0151-MWD-E on October 18, 2017, assessing $13,562 in administrative penalties with $2,712 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Nerro Supply, LLC, Docket No. 2017-0215-PWS-E on October 18, 2017, assessing $432 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Makli Thatta Enterprise Inc dba Diamond Foods, Docket No. 2017-0222-PST-E on October 18, 2017, assessing $8,004 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Adam Taylor, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Laguna Madre Water District, Docket No. 2017-0266-MWD-E on October 18, 2017, assessing $9,150 in administrative penalties with $1,830 deferred. Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Colleyville, Docket No. 2017-0382-MWD-E on October 18, 2017, assessing $4,875 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Maverick County, Docket No. 2017-0408-PWS-E on October 18, 2017, assessing $1,394 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting James Fisher, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Stanton, Docket No. 2017-0653-PWS-E on October 18, 2017, assessing $435 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Claudia Corrales, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201704186
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 18, 2017

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Notice of Hearing

360 DEVELOPMENT LLC

SOAH Docket No. 582-18-0341

TCEQ Docket No. 2017-0905-MWD

Permit No. WQ0015473001

APPLICATION.

360 Development LLC, 6300 Bee Caves Road, Building 2, Suite 500, Austin, Texas 78746, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, Proposed TCEQ Permit No. WQ0015473001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day via public access subsurface drip irrigation system with a minimum area of 120,000 square feet. This permit will not authorize a discharge of pollutants into water in the State. TCEQ received this application on May 2, 2016.

The wastewater treatment facility and disposal site will be located at 800 Capital of Texas Highway in Travis County, Texas 78746. The wastewater treatment facility and disposal site will be located in the drainage basin of Lake Austin in Segment No. 1403 of the Colorado River Basin.

The TCEQ Executive Director has prepared a draft permit which, 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. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Laura's Library, 9411 Bee Caves Road, Austin, Texas. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: *http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.311944&lng=-97.827222&zoom=13&type=r.* For the exact location, refer to the application.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. - December 4, 2017

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

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 September 8, 2017. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; 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 adversely affected by the application in a way not common to members of 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.

In accordance with 1 TAC §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at *www.soah.texas.gov,* or in printed format upon request to SOAH."

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 about the TCEQ can be found at our web site at *http://www.tceq.texas.gov/.*

Further information may also be obtained from 360 Development LLC at the address stated above or by calling Mrs. Shelly Rosales at (512) 433-5396.

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.

Issued: October 17, 2017

TRD-201704175
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 17, 2017

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Notice of Hearing

TEXAS PROVIDENCE INVESTMENTS, LLC

SOAH Docket No. 582-18-0066

TCEQ Docket No. 2017-0741-MWD

Permit No. WQ0015460001

APPLICATION.

Texas Providence Investments, LLC, 10600 Richmond Avenue, Houston, Texas 77042, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015460001to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day. TCEQ received this application on February 17, 2016.

The facility will be located at 13722 Kluge Road, in Cypress, Harris County, Texas 77429. The treated effluent will be discharged to a Harris County Flood Control District detention pond; thence to Cypress Creek in Segment No. 1009 of the San Jacinto River Basin. The unclassified receiving water use is minimal aquatic life use for the Harris County Flood Control District detention pond. The designated uses for Segment No. 1009 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code (TAC) § 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 Cypress Creek, which has been identified as having high aquatic life use. 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 prepared a draft permit which, 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. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Texas Commission on Environmental Quality Region 12 Office, 5425 Polk Street, Suite H, Houston, Texas. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.973055&lng=-95.638055&zoom=13&type=r>. For the exact location, refer to the application.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. - November 28, 2017

City of Houston - Annex Chamber

900 Bagby Street

Houston, Texas 77002

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 August 28, 2017. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; 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 adversely affected by the application in a way not common to members of 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.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

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 about the TCEQ can be found at our web site at http://www.tceq.texas.gov/.

Further information may also be obtained from Texas Providence Investments, LLC, at the address stated above or by calling Ms. Shelly Young, P.E., Manager, WaterEngineers, Inc., at (281) 373-0500.

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.

Issued: October 13, 2017

TRD-201704174
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 17, 2017

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of DLUBAK GLASS COMPANY

SOAH Docket No. 582-18-0564

TCEQ Docket No. 2016-1479-IHW-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. - November 16, 2017

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 28, 2017, concerning assessing administrative penalties against and requiring certain actions of DLUBAK GLASS COMPANY, for violations in Ellis County, Texas, of: 30 Tex. Admin. Code §335.2(a).

The hearing will allow DLUBAK GLASS COMPANY, 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 DLUBAK GLASS COMPANY, 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 DLUBAK GLASS COMPANY 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.** DLUBAK GLASS COMPANY, 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 ch. 361, and 30 Tex. Admin. Code chs. 70 and 335; 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.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at *www.soah.texas.gov,* or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: October 16, 2017

TRD-201704172
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 17, 2017

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of RICHARD BILLINGS DBA OAK HILLS RANCH WATER

SOAH Docket No. 582-18-0565

TCEQ Docket No. 2016-2006-PWS-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. - November 16, 2017

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 August 2, 2017, concerning assessing administrative penalties against and requiring certain actions of Richard Billings dba Oak Hills Ranch Water, for violations in Texas County, Texas, of: Tex. Health & Safety Code §341.0315(c), 30 Tex. Admin. Code §§290.41(c)(3)(N), 290.43(c)(3), 290.45(b)(1)(C)(iii), 290.46(f)(2), (f)(3)(D)(ii), (j), (n), (n)(1), and (v), TCEQ Agreed Or-

der Docket No. 2013-1350-MLM-E, Ordering Provision Nos. 2.a.iv., 2.a.v., 2.a.vii., and 2.g.i.

The hearing will allow Richard Billings dba Oak Hills Ranch Water, 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 Richard Billings dba Oak Hills Ranch Water, 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 **Richard Billings dba Oak Hills Ranch Water 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.** Richard Billings dba Oak Hills Ranch Water, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Health & Safety Code ch. 341 and 30 Tex. Admin. Code chs. 70 and 290; 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 Audrey Liter, 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.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at *www.soah.texas.gov,* or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: October 16, 2017

TRD-201704173
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 17, 2017

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Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Julia Shinn at (512) 463-5800.

Deadline: Semiannual Report due January 17, 2017, for Committees

Veronica F. Thibideaux, Alief Federation of Teachers Committee on Political Education, 1269 Beechnut St., Ste. A600, Houston, Texas 77072

Deadline: Monthly Report due August 5, 2017, for Committees

Bonita C. Ocampo, Tarrant County Tejano Democrats, 3803 S. Jones St., Fort Worth, Texas 76110-5512

Deadline: Personal Financial Statement Due June 30, 2017

David Canales, P.O. Box 592055, San Antonio, Texas 78259

Jonathan S. Strickland, 621 Monette Dr., Bedford, Texas 76022

TRD-201704114
Seana Willing
Executive Director
Texas Ethics Commission
Filed: October 13, 2017

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Texas Facilities Commission

Request for Proposals #303-9-20618

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice (TDCJ), announces the issuance of Request for Proposals (RFP) #303-9-20618. TFC seeks a five (5) or ten (10) year lease of approximately 5,057 square feet of office space in Victoria, Victoria County, Texas.

The deadline for questions is October 27, 2017, and the deadline for proposals is November 13, 2017, at 3:00 p.m. The award date is December 15, 2017. 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 Gayla Davis, at (512) 475-2438. 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=144256.

TRD-201704157
Kay Molina
General Counsel
Texas Facilities Commission
Filed: October 16, 2017

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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 2, 2017 to October 13, 2017. 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, October 20, 2017. The public comment period for this project will close at 5:00 p.m. on Sunday, November 19, 2017.

FEDERAL AGENCY ACTIONS:

Applicant: Enbridge

Location: Petronila Compressor Station (Nueces County), Blessing Compressor Station (Matagorda County), Mont Belvieu Compressor Station (Chambers County), and Vidor Compressor Station (Orange County), Texas

LATITUDE & LONGITUDE (NAD 83): Petronila Compressor Station (Nueces County) 27.69733, -97.63104; Blessing Compressor Station (Matagorda County) 28.81291, -96.2225; Mt. Belvieu Compressor Station (Chambers County) 29.81623, -94.82528; and Vidor Compressor Station (Orange County) 30.0619, -93.9755

Project Description: The South Texas Expansion Project includes a 8,400 horsepower (hp) gas turbine unit (Petronila Compressor Station) in Nueces County, Texas; a 8,400 hp gas turbine unit at its existing Blessing Compressor Station in Matagorda County, Texas; clean burn emission work and piping modifications at its existing Mont Belvieu Compressor Station in Chambers County, Texas; and piping modifications at its existing Vidor Compressor Station in Orange County, Texas. The Project also includes piping modifications at its existing Angleton Station property in Brazoria County, Texas, located outside the coastal zone. The Project would be constructed in uplands and would avoid impacts on coastal natural resource areas. Project impacts within the coastal zone include clearing of vegetation and construction on 114.3 acres of land within the construction footprint and permanently maintaining 44.1 acres of land as commercial/industrial during operations.

Type of Application: Federal Energy Regulatory Commission (FERC) Certificate of Public Convenience and Necessity docket number CP15-499-000 and CP15-499-001.

CMP Project No: 18-1030-F1

Applicant: Entergy Texas, Inc.

Location: Wetlands, Chambers County, Texas

LATITUDE & LONGITUDE (NAD 83): 29.791598 -94.402456

Project Description: The applicant proposes to permanently discharge fill material into approximately 2.97 acres of wetlands during the construction of the expansion of an existing 138kV substation and erosion protection features. An additional 0.10 acre of wetlands will experience secondary impacts caused by the proposed discharge.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2017-00190. This application will be reviewed pursuant to Section 404 of the Clean Water Act (CWA). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 18-1032-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Ms. Allison Buchtien, P.O. Box 12873, Austin, Texas 78711-2873, or via email at federal.consistency@glo.texas.gov. Comments should be sent to Ms. Buchtien at the above address or by email.

TRD-201704176
Anne L. Idsal
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: October 18, 2017

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for Preadmission Screening and Resident Review Specialized Services

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 10, 2017, at 9:30 a.m., to receive comment on proposed payment rates for Preadmission Screening and Resident Review (PASRR) Specialized Services for Medicaid clients residing in Nursing Facilities.

The public hearing will be held in the Public Hearing Room of the Brown-Heatly Building located at 4900 N. Lamar Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Lamar Boulevard. HHSC will also broadcast the public hearing; the broadcast can be accessed at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. HHSC proposes the following payment rates for PASRR Specialized Services to be effective December 1, 2017: Supported Employment (per hour), $29.15; Employment Assistance (per hour), $29.66; Independent Living Skills Training (per hour), $17.73; Behavioral Support (per hour), $86.87; Habilitation Coordination (monthly), $208.23; and Day Habilitation (per day), $41.83.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code §355.315, concerning Reimbursement Methodology for Preadmission Screening and Resident Review (PASRR) Specialized Services, which will be effective December 1, 2017.

Briefing Package. A briefing package describing the proposed payment rates will be available at http://rad.hhs.texas.gov/rate-packets on or after October 20, 2017. Interested parties may obtain a copy of the briefing package before the hearing by contacting the HHSC Rate Analysis Department by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RAD-LTSS@hhsc.state.tx.us. The briefing package will also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RAD-LTSS@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to the Texas Health and Human Services Commission, Rate Analysis Department,

Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Boulevard, Austin, Texas 78751-2316.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401 at least 72 hours prior to the hearing so appropriate arrangements can be made.

TRD-201704096
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 13, 2017

♦ ♦ ♦

Public Notice - Texas State Plan for Medical Assistance Amendments

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendments are effective November 1, 2017.

The purpose of these amendments is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for physicians and other practitioners who provide anesthesia services.

The proposed amendments are estimated to result in an aggregate cost savings of $36,921 for the remainder of federal fiscal year (FFY) 2018, consisting of $21,001 in federal funds and $15,920 in state general revenue. For FFY 2019, the estimated cost savings is $37,507, consisting of $21,499 in federal funds and $16,008 in state general revenue. For FFY 2020, the estimated cost savings is $38,108, consisting of $21,844 in federal funds and $16,264 in state general revenue.

Further detail on specific rates and percentage changes is available on the HHSC Rate Analysis website under the November 1, 2017, proposed effective date at: *http://www.hhsc.state.tx.us/Rad/rate-packets.shtml.*

Rate Hearing. A rate hearing was held on September 20, 2017, at 9:00 a.m. in Austin, Texas. Information about the proposed rate changes and the hearing can be found in the September 8, 2017, issue of the *Texas Register* at pages (4678-4679) at *http://www.sos.state.tx.us/texreg/index.shtml.*

Copy of Proposed Amendments. Interested parties may obtain a free copy of the proposed amendments or additional information about the amendments by contacting Doneshia Ates, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 428-1963; by facsimile at (512) 730-7472; or by email at *Doneshia.Ates@hhsc.state.tx.us.* Copies of the proposed amendments will be available for review at the local county offices of the Texas Department of Aging and Disability Services.

Written Comments. Written comments and/or requests to review 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: Rate Analysis, Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Rate Analysis, Mail Code H-400

Brown-Heatly Building

4900 North Lamar Blvd.

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Rate Analysis at (512) 730-7475

Email

RADAcuteCare@hhsc.state.tx.us

TRD-201704166
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 17, 2017

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for MUTUAL OF OMAHA MEDICARE ADVANTAGE COMPANY, a foreign Health Maintenance Organization. The home office is in Omaha, Nebraska.

Application for THE PHARMACISTS LIFE INSURANCE COMPANY, a foreign life, accident and/or health company, to change its name to RX LIFE INSURANCE COMPANY. The home office is in Scottsdale, Arizona.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Jeff Hunt, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201704182
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: October 18, 2017

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on October 11, 2017, to amend a state-issued certificate of franchise authority, under Public Utility Regulatory Act §§66.001-66.016.

Project Title and Number: Application of Nortex Communications Company d/b/a Nortex Communications for Amendment to a State-Issued Certificate of Franchise Authority, Project Number 47688.

Application: Nortex Communications requests amendment to its state-issued certificate of franchise authority to expand the company's service area footprint to include the additional areas of Tioga and Pilot Point and to update expansions in the areas of Gainesville and Valley View.

Information on the application may be obtained by contacting the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by

phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 47688.

TRD-201704163
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 16, 2017

♦ ♦ ♦

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on October 16, 2017, to amend a state-issued certificate of franchise authority, under Public Utility Regulatory Act §§66.001 - 66.016.

Project Title and Number: Application of Frontier Southwest Incorporated d/b/a Frontier Communications of Texas for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 47708.

The requested amendment seeks to expand Frontier Southwest Incorporated d/b/a Frontier Communications of Texas' service area footprint by expanding the service area for the cities of Coppell, Grapevine, and Irving, along with an expanded new geographic service area within the DFW Airport property boundary of the City of Euless.

Information on the application may be obtained by contacting the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 47708.

TRD-201704178
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 18, 2017

♦ ♦ ♦

Notice of Application for a Depreciation Rate Change

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on October 13, 2017, for a depreciation rate change under Public Utility Regulatory Act §52.252 and §53.056, Texas Utilities Code Annotated §§11.001-58.303 (West 2017), §§59.001-66.017 (West 2007 & Supp. 2017).

Docket Title and Number: Application of Brazoria Telephone Company for a Depreciation Rate Change, Docket Number 47694.

The Application: Brazoria Telephone Company (Brazoria) filed an application for a depreciation rate change associated with Account 2232.0 - Circuit Equipment, effective January 1, 2017. Brazoria proposed a depreciation rate change from 7.2% to 14.00% based upon a useful life of seven years.

Persons wishing to intervene or comment on the action sought should contact the commission 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 47694.

TRD-201704160
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 16, 2017

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on October 12, 2017, in accordance with the Texas Water Code.

Docket Style and Number: Application of George T. Foley, Jr., Independent Executor of the Aileen M. Foley Estate and Crystal Clear Water, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Bosque County, Docket Number 47690.

The Application: On October 12, 2017, George T. Foley, on behalf of the Aileen M. Foley Estate, filed an application for the sale, transfer, or merger of facilities and certificate rights in Bosque County. Specifically, the Foley Estate seeks approval to sell and transfer all of water certificate of convenience and necessity (CCN) No. 11777 to Crystal Clear Water, Inc.'s CCN No. 12997.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, 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 47690.

TRD-201704162
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 16, 2017

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on October 12, 2017, to amend a certificate of convenience and necessity for a proposed transmission line in Reeves County.

Docket Style and Number: Application of Oncor Electric Delivery Company LLC to Amend its Certificate of Convenience and Necessity for a 138-kV Transmission Line in Reeves County (Tunstill POD CCN), Docket Number 47595.

The Application: The application of Oncor Electric Delivery Company LLC is designated as the Tunstill Point of Delivery (POD) 138 kilovolt (kV) Transmission Line Project and will be located approximately 4 to 5 miles north of the Riverton Switching Station site and northeast of FM 652 and US Hwy. 285 near the community of Orla. The facilities include construction of a new single-circuit 138-kV transmission line to be built on double-circuit capable steel and concrete monopoles. The total estimated cost for the project is $8.7 million. The proposed project is presented with 10 alternate routes and is estimated to be ap-

proximately 5.0 to 6.3 miles in length. The commission may approve any of the routes or route segments presented in the application.

Persons wishing to intervene or comment on the action sought should contact the commission 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. The deadline for intervention in this proceeding is November 27, 2017. 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 47595.

TRD-201704165
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 16, 2017

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on October 12, 2017, to amend a certificate of convenience and necessity (CCN) for a proposed transmission line in Pecos County.

Docket Style and Number: Application of Electric Transmission Texas, LLC to Amend its Certificates of Convenience and Necessity for the Bakersfield to Red Barn Double-Circuit and Red Barn to Waymark Single-Circuit 345-kV Transmission Lines in Pecos County, Docket Number 47603.

The Application: Electric Transmission Texas, LLC filed an application to amend a CCN for a proposed 345-kV transmission line in Pecos County. The facilities include construction of a double and single-circuit 345-kV transmission line to be built on steel single-pole structures. The total estimated cost for the project is $9.7 million plus $4.4 million in substation improvements. The proposed project is presented with a single routing option and is estimated to be approximately 3.94 miles in length.

Persons wishing to intervene or comment on the action sought should contact the commission 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. The deadline for intervention in this proceeding is November 27, 2017. 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 47603.

TRD-201704177
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 18, 2017

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Notice of Application to Amend a Water and a Sewer Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend a water and a sewer certificate of convenience and necessity (CCN) in Kendall County.

Docket Style and Number: Application of Kendall West Utility, LLC to Amend its Certificates of Convenience and Necessity in Kendall County, Docket Number 47693.

The Application: Kendall West Utility, LLC filed an application to amend its water CCN No.13213 and sewer CCN No. 21071 in Kendall County. The total area being requested includes approximately 182 acres. There are zero current customers.

Persons wishing to intervene or comment on the action sought should contact the commission 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 47693.

TRD-201704187
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 18, 2017

♦ ♦ ♦

Notice of Application to Amend a Water Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend a water certificate of convenience and necessity (CCN) in Van Zandt County.

Docket Style and Number: Application of Edom Water Supply Corporation to Amend a Water Certificate of Convenience and Necessity in Van Zandt County, Docket Number 47685.

The Application: Edom Water Supply Corporation seeks to amend its water CCN No. 10747 in Van Zandt County.

Persons wishing to intervene or comment on the action sought should contact the commission 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 47685.

TRD-201704161
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 16, 2017

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Notice of Application to Relinquish Designation as an Eligible Telecommunications Carrier and as an Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on October 11, 2017, to relinquish designation as an eligible telecommunications carrier (ETC) and eligible telecommunications provider (ETP).

Docket Title: Petition of AT&T Texas to Relinquish its Eligible Telecommunications Carrier Designation in Specified Areas and Notice of Termination of Eligible Telecommunications Provider Designation, Docket Number 47687.

The Application: AT&T Texas notified the commission that the company seeks to relinquish its ETC designation for certain portions of its exchange territory. In addition, AT&T Texas is relinquishing its ETP designation in all of its service areas throughout Texas, including its in-

cumbent local exchange carrier service areas and the company's competitive local exchange carrier service areas.

Persons who wish to intervene in the proceeding or comment upon the action sought should notify the commission as a deadline to intervene will be established. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call 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 47687.

TRD-201704164
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 16, 2017

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Notice of Filing to Withdraw Services

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) to withdraw services under 16 Texas Administrative Code §26.208(h).

Docket Title and Number: Application of CenturyTel of Port Aransas, Inc. d/b/a CenturyLink to Withdraw Services Under 16 Texas Administrative Code §26.208(h) - Docket Number 47666.

The Application: On October 3, 2017, CenturyTel of Port Aransas, Inc. d/b/a CenturyLink filed an application with the commission to withdraw its Prepaid Local Telephone Service package. CenturyLink seeks to withdraw the services because it no longer markets or sells these prepaid services. CenturyLink explained that the deletion of these old services will avoid confusion about the availability of offers if/when new prepaid offers are introduced. The proceedings were docketed and suspended on October 4, 2017, to allow adequate time for review and intervention.

Information on the application may be obtained by contacting the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. The deadline to intervene is November 27, 2017. All inquiries should reference Docket Number 47666.

TRD-201704185
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 18, 2017

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Notice of Filing to Withdraw Services

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) to withdraw services under 16 Texas Administrative Code §26.208(h) (TAC).

Docket Title and Number: Application of CenturyLink of Louisiana, Inc. to Withdraw Services Under 16 Texas Administrative Code §26.208(h) - Docket Number 47667.

The Application: On October 3, 2017, under 16 TAC §26.208(h), CenturyLink of Louisiana, Inc. filed an application with the Commission to withdraw its Prepaid Local Telephone Service package. CenturyLink seeks to withdraw the services because it no longer markets or sells these prepaid services. CenturyLink explained that the deletion of these old services will avoid confusion about the availability of offers if/when new prepaid offers are introduced. The proceedings were docketed and suspended on October 4, 2017, to allow adequate time for review and intervention.

Information on the application may be obtained by contacting 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. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. The deadline to intervene is November 27, 2017. All inquiries should reference Docket Number 47667.

TRD-201704179
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 18, 2017

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Notice of Petition for Recovery of Universal Service Funding

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on October 5, 2017, for recovery of Universal Service Funding pursuant to Public Utility Regulatory Act, §56.025 and 16 Texas Administrative Code §26.406.

Docket Style and Number: Application of XIT Rural Telephone Cooperative, Inc. to Recover Funds from the Texas Universal Service Fund Under 16 TAC §26.406. Docket Number 47677.

The Application: XIT Rural Telephone Cooperative, Inc., seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission (FCC) actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to XIT. The petition requests that the Commission allow recovery of funds from the TUSF in the amount of $473,277 for 2016 to replace FUSF revenue reductions.

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 47677.

TRD-201704092
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 11, 2017

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Notice of Petition for Recovery of Universal Service Funding

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on October 5, 2017 for recovery of Universal Service Funding pursuant to Public Utility Regulatory Act, §56.025 and 16 Texas Administrative Code §26.406.

Docket Style and Number: Application of Alenco Communications, Inc. to Recover Funds From the Texas Universal Service Fund Under 16 TAC §26.406. Docket Number 47678.

The Application: Alenco Communications, Inc. (ACI) seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission (FCC) actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to ACI. The petition requests that the Commission allow recovery of funds from the TUSF in the amount of $162,833 for 2016 to replace FUSF revenue reductions.

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 47678.

TRD-201704091
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 11, 2017

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Notice of Petition for Recovery of Universal Service Funding

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on October 11, 2017 for recovery of Universal Service Funding pursuant to Public Utility Regulatory Act, § 56.025 and 16 Texas Administrative Code §26.406.

Docket Style and Number: Application of Ganado Telephone Company, Inc. to Recover Funds From the Texas Universal Service Fund Under 16 TAC §26.406. Docket Number 47683.

The Application: Ganado Telephone Company, Inc. seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission (FCC) actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to Ganado. The petition requests that the Commission allow recovery of funds from the TUSF in the amount of $189,031 ($26,021 for 2016 and $163,010 for 2017) to replace FUSF revenue reductions.

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 47683.

TRD-201704118
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 13, 2017

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Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Engineering Services

Culberson County, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a professional engineering firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualification statements for the current aviation project as described below.

Current Project: Culberson County; TxDOT CSJ No.: 1724VHORN.

The TxDOT Project Manager is Harry Lorton, P.E.

Scope: Provide engineering and design services, including construction administration, to:

1. Rehabilitate and mark Runway 3-21;

2. Rehabilitate and mark Runway 7-25;

3. Rehabilitate and mark taxiway A, B, and C;

4. Rehabilitate apron;

5. Replace Visual Approach Slope Indicator with Precision Approach Path Indicators -2 (PAPI-2) for Runway 3 and Runway 21; and

6. Rehabilitate Medium Intensity Runway Lights for Runway 3-21.

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises (DBE).

The DBE goal for the design phase of the current project is 3%. The goal will be re-set for the construction phase.

Utilizing multiple engineering/design and construction grants over the course of the next five years, future scope of the work item at the Culberson County Airport may include the following: install security fencing.

Culberson County reserves the right to determine which of the services listed above may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services listed above.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at *http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm* by selecting "Culberson County Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects.

AVN-550 Preparation Instructions:

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, (800) 68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html.* The form may not be altered in any way. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight pages of data plus one optional illustration page. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, or submits a cover page with the AVN-550, that provider will be disqualified. Responses to this solicitation WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

The completed Form AVN-550 must be received in the TxDOT Aviation eGrants system no later than November 29, 2017, 11:59 p.m. (CDST). Electronic facsimiles or forms sent by email or regular/overnight mail will not be accepted.

Firms that wish to submit a response to this solicitation must be a user in the TxDOT Aviation eGrants system no later than one business day before the solicitation due date. To request access to eGrants, please complete the Contact Us web form located at *http://txdot.gov/government/funding/egrants-2016/aviation.html.*

An instructional video on how to respond to a solicitation in eGrants is available at *http://txdot.gov/government/funding/egrants-2016/aviation.html.*

Step by step instructions on how to respond to a solicitation in eGrants will also be posted in the RFQ packet at *http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm.*

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html* under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations for the design and bidding phases. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at (800) 68-PILOT (74568). For procedural questions, please contact Kelle Chancey, Grant Manager. For technical questions, please contact Harry Lorton, P.E. Project Manager.

For questions regarding responding to this solicitation in eGrants, please contact the TxDOT Aviation help desk at (800) 687-4568 or *avn-egrantshelp@txdot.gov.*

TRD-201704100
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 13, 2017

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Texas Water Development Board

Request for Qualifications for Services Associated with Developing a State Flood Plan

The Texas Water Development Board (TWDB) seeks responses to this Request for Qualifications (RFQ) for the award of a Services Contract to identify, compile, and summarize information on the history, risks, projects, data, needs, and costs associated with flood mitigation and protection throughout Texas and to develop recommendations for reducing flood risk as part of a project to develop a statewide flood plan for Texas, as noted in the posting located on the Electronic State Business Daily (ESBD).

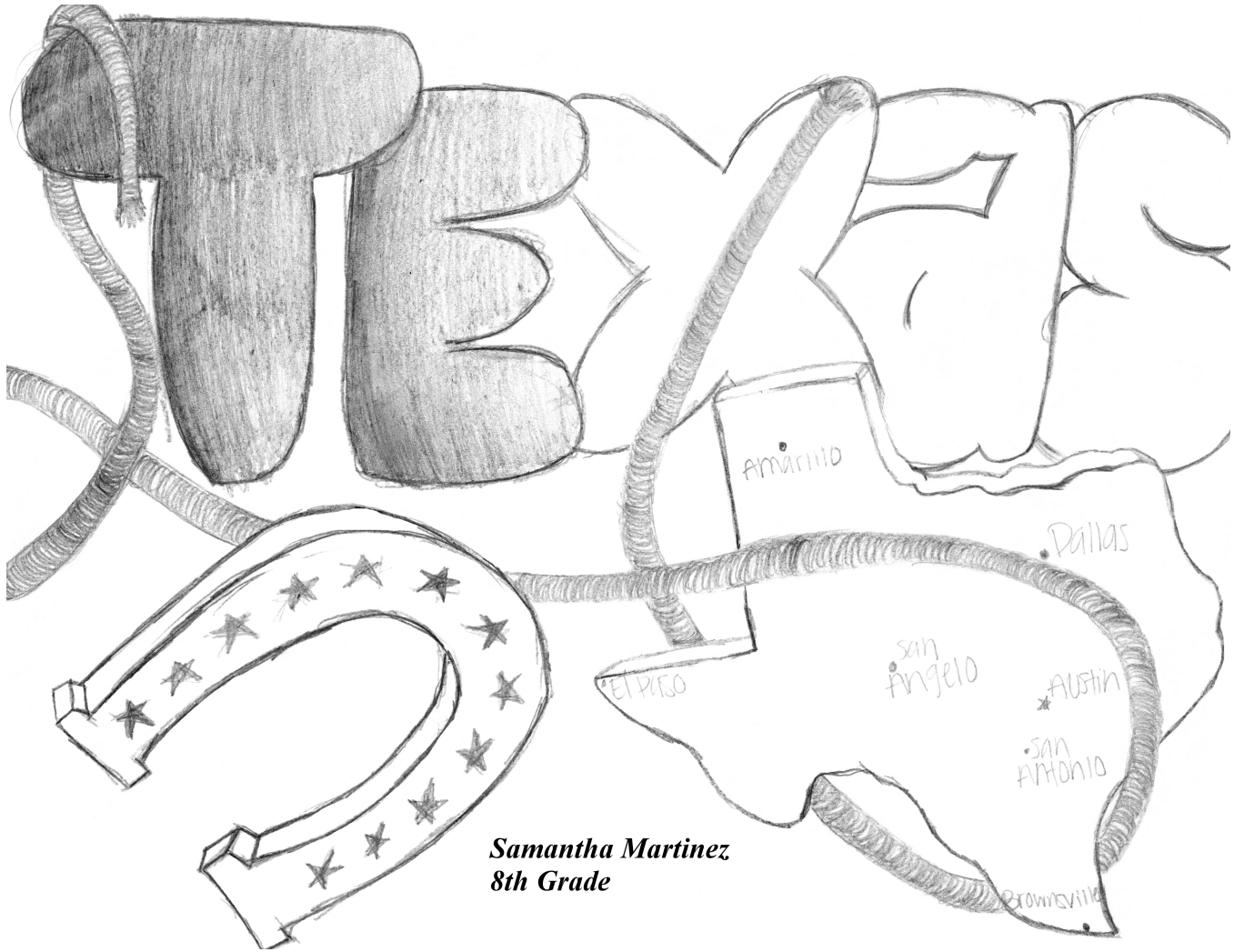
To obtain a copy of the RFQ and complete details including due dates and the non-mandatory pre-bid conference, please view the following ESDB link:

http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=144196.

Please become familiar with the ESBD, as additional information or addenda may be posted to this site. If you are unable to download the document from the ESBD, please request a copy via email to Contracts@twdb.texas.gov. All inquiries/questions MUST be in writing and emailed to Contracts@twdb.texas.gov. Please be sure to include the RFQ number in the subject line.

TRD-201704115
Todd Chenoweth
General Counsel
Texas Water Development Board
Filed: October 13, 2017

♦ ♦ ♦



Samantha Martinez
8th Grade

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 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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