TEXAS REGISTER

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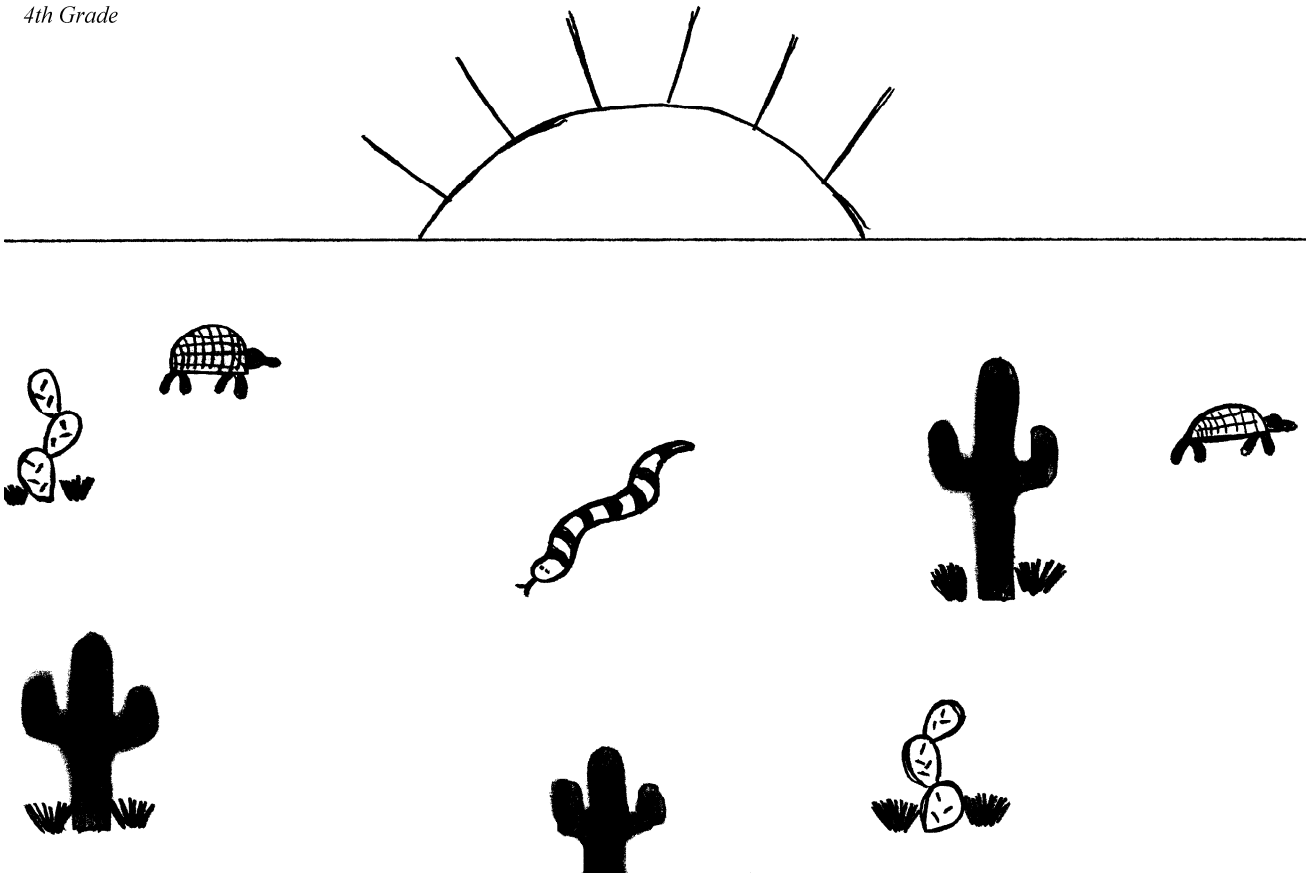
Steven Koehne
4th Grade



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

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

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IN THIS ISSUE

IN ADDITION

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 January 10, 2008

Appointed to the Texas Automobile Burglary and Theft Prevention Authority for a term to expire February 1, 2009, Margaret Wright of El Paso (replacing Denise Anaya-Saenz of El Paso who resigned).

Appointed to the Texas Automobile Burglary and Theft Prevention Authority for a term to expire February 1, 2013, Linda Kinney of Dripping Springs (replacing Cindy Ramos-Davidson of El Paso whose term expired).

Appointed to the Texas Animal Health Commission for a term to expire September 6, 2013, Randy Chris Brown of Lubbock (replacing Rogelio Martinez of McAllen whose term expired).

Appointed to the Texas Animal Health Commission for a term to expire September 6, 2013, Mark Allyn Wheelis of Victoria (replacing Jerry P. Windham of College Station whose term expired).

Appointed to the Texas Animal Health Commission for a term to expire September 6, 2013, Richard Wall Winters, Jr. of Brady (replacing Jill Bryar Wood of Wimberley whose term expired).

Appointed to the Texas Animal Health Commission for a term to expire September 6, 2013, Kenneth Gene Jordan of San Saba (replacing Richard C. Traylor of Carrizo Springs whose term expired).

Appointed to the Texas Animal Health Commission for a term to expire September 6, 2013, William Frank Edmiston of Eldorado (Mr. Edmiston is being reappointed).

Designating Ernesto Morales as Presiding Officer of the Texas Animal Health Commission for a term at the pleasure of the Governor. Mr. Morales is replacing Richard C. Traylor of Carrizo Springs as presiding officer.

Appointments for January 11, 2008

Appointed to the Texas Public Finance Authority for a term to expire February 1, 2013, Gerald Alley of Arlington (replacing R. David Kelly of Plano whose term expired).

Appointed to the Guadalupe-Blanco River Authority Board of Directors for a term to expire February 1, 2011, Arlene N. Marshall of Port Lavaca (replacing Stephen F. Wilson of Port Lavaca whose term expired).

Appointed to the Guadalupe-Blanco River Authority Board of Directors for a term to expire February 1, 2013, Frank Pagel of Tivoli (Mr. Pagel is being reappointed).

Appointed to the Guadalupe-Blanco River Authority Board of Directors for a term to expire February 1, 2013, James L. Powers of Dripping Springs (replacing Jack R. Gary of San Marcos whose term expired).

Appointed to the Board of Pilot Commissioners for Galveston County for a term to expire February 1, 2011, James Earl Toups of League City (replacing Edgar Allen Bircher of Galveston whose term expired).

Appointed as Inspector General for Health and Human Services for a term to expire February 1, 2009, Kelly Bart Bevers of Round Rock (Mr. Bevers is being reappointed).

Appointed to the Jefferson and Orange County Pilots for a term to expire August 22, 2008, Morris Carter of Port Arthur (Mr. Carter is being reappointed).

Appointed to the Jefferson and Orange County Pilots for a term to expire August 22, 2008, Travis Todd Miller of Orange (replacing Kevin Michael Williams of Orange whose term expired).

Appointed to the Jefferson and Orange County Pilots for a term to expire August 22, 2009, George W. Brown of Beaumont (Mr. Brown is being reappointed).

Appointed to the Jefferson and Orange County Pilots for a term to expire August 22, 2009, William F. Scott of Nederland (Mr. Scott is being reappointed).

Appointed to the Texas County and District Retirement System Board of Trustees for a term to expire December 31, 2013, Robert C. Willis of Livingston (Mr. Willis is being reappointed).

Appointed to the Texas County and District Retirement System Board of Trustees for a term to expire December 31, 2013, Bridget McDowell of Baird (Ms. McDowell is being reappointed).

Appointed to the Texas County and District Retirement System Board of Trustees for a term to expire December 31, 2013, Robert A. Eckels of Houston (Mr. Eckels is being reappointed).

Appointed to the Texas Small Business Industrial Development Corporation for a term to expire at the pleasure of the Governor, Kelly Doster of Frisco (replacing Rick Rhodes of Austin who resigned).

Appointed to the Texas Board of Nursing for a term to expire January 31, 2013, Kristin K. Benton of Austin (replacing Joyce M. Adams of Houston who is deceased).

Appointed to the Texas Medical Board of a term to expire April 13, 2009, Allan Shulkin of Dallas (replacing Dr. Keith Miller of Center who resigned).

Designating Rebecca Armendariz Klein of San Antonio as Presiding Officer of the Lower Colorado River Authority Board of Directors for a term at the pleasure of the Governor. Ms. Klein is replacing Ray Wilkerson of Austin as presiding officer. Mr. Wilkerson remains as a current board member.

Rick Perry, Governor

TRD-200800136

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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.)

Office of the Attorney General

Request for Opinions

RQ-0659-GA

Requestor:

The Honorable Hector M. Lozano

Frio County Attorney

500 East San Antonio Street, Box 1

Pearsall, Texas 78061-3100

Re: Expenditures that a county clerk may make from the Records Management Fund collected under section 118.0216, Local Government Code and article 102.005, Code of Criminal Procedure (RQ-0659-GA)

Briefs requested by February 11, 2008

RQ-0660-GA

Requestor:

The Honorable Hector M. Lozano

Frio County Attorney

500 East San Antonio Street, Box 1

Pearsall, Texas 78061-3100

Re: Authority of a county tax assessor-collector to award additional compensation to her deputies from funds collected from section 501.138, Transportation Code, the Certificate of Title Act (RQ-0660-GA)

Briefs requested by February 11, 2008

RQ-0661-GA

Requestor:

Mr. Sidney "Buck" LaQuey

Grimes County Auditor

Post Office Box 510

Anderson, Texas 77830

Re: Whether a county commissioner may simultaneously serve as an assistant county jailer (RQ-0661-GA)

Briefs requested by February 11, 2008

RQ-0662-GA

Requestor:

The Honorable Kim Brimer

Chair, Committee on Administration

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Applicability of chapter 1501, Insurance Code, to certain health benefit "cafeteria" plans offered by employers (Request No. 0662-GA)

Briefs requested by February 15, 2008

RQ-0663-GA

Requestor:

Mr. Robert Scott

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Proper formula under section 21.402, Education Code, for determining the required contributions by a school district to the Teacher Retirement System for compensation that exceeds the statutory minimum (RQ-0663-GA)

Briefs requested by February 15, 2008

For further information, please access the Web site at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200800167
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: January 15, 2008

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Opinions

Opinion No. GA-0589

The Honorable Fred Hill

Chair, Committee on Local Government Ways and Means

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of property tax consultant to act as agent for property owners under section 1.111, Tax Code (RQ-0596-GA)

SUMMARY

Section 1.111(b) of the Texas Tax Code authorizes a designation of agent form to be signed by an "other person authorized to act on behalf of the owner." A property tax consultant that falls within the statutory language, as construed, is authorized by section 1.111(b) to execute and complete the designation form for the property owner. Questions regarding the validity and sufficiency of a given fee agreement are outside the purview of the opinion process.

The Comptroller of Public Accounts must comply with applicable state law. Whether behavior or conduct violates a statute is a fact question that cannot be answered in the opinion process.

Opinion No. GA-0590

The Honorable Elton R. Mathis

Waller County Criminal District Attorney

846 Sixth Street, Suite 1

Hempstead, Texas 77445

Re: Consequences resulting from the downsizing of the Waller County Appraisal District (RQ-0601-GA)

SUMMARY

Waller County Appraisal District is responsible, on or after January 1, 2008, for litigation filed against the district under Tax Code chapter 42 before January 1, 2008, and involving property outside the district's home county. The general savings clause in the Code Construction Act continues in effect relevant portions of section 6.02, Tax Code, such that the district has continuing authority to defend itself in the pending litigation, and a taxing unit has a continuing obligation to pay the related costs.

For further information, please access the Web site at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200800182
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: January 16, 2008

♦ ♦ ♦

Opinions Withdrawn

Opinion No. GA-0347

This opinion has been withdrawn.

Opinion No. GA-0445

This opinion has been withdrawn.

For further information, please access the Web site at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200800173
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: January 15, 2008

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PROPOSED RULES

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 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

19 TAC §61.1012

The Texas Education Agency (TEA) proposes an amendment to §61.1012, concerning contracts and tuition. The proposed amendment would modify the existing rule to reflect changes in law made by House Bill (HB) 1, 79th Texas Legislature, Third Called Session, 2006.

Through 19 TAC §61.1012, adopted to be effective September 7, 2000, the commissioner exercised rulemaking authority relating to contracts for tuition outside a school district. In accordance with the Texas Education Code (TEC), §25.039 and §42.106, the current rule establishes definitions, explains tuition charges for transfer students, and describes the maximum tuition amount allowed for property value adjustment. The rule was last amended to be effective March 28, 2004, to reflect changes in statute made by HB 1619, 78th Texas Legislature, 2003. These changes modified TEC, §25.039 and §42.106, to allow a district to charge tuition at a rate higher than the rate limit established in statute, yet limited a district's tuition-related adjustments to property value to adjustments prescribed by the calculated limit.

The proposed amendment to 19 TAC §61.1012 would incorporate new elements of the state funding system that were adopted in HB 1, 79th Texas Legislature, Third Called Session, 2006, and delineate the revised tuition calculation to reflect those changes. The proposed amendment would permit a district to continue receiving the adjustment to property values to the extent that the district is reimbursed for its tuition costs. The proposed amendment would limit the use of the adjusted property values so that a district is not reimbursed for tuition costs more than once.

The proposed amendment would also remove several expired provisions and update references to statutory citations.

Shirley Beaulieu, associate commissioner for finance/chief financial officer, 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 proposed amendment.

Ms. Beaulieu 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 would be that tuition rates for school districts will be based on current law. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

The public comment period on the proposal begins January 25, 2008, and ends February 24, 2008. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §25.039 and §42.106, which authorize the commissioner of education to by rule specify the amount of tuition to be paid under contract for education of students outside a district. House Bill 1, Section 1.22, 79th Texas Legislature, Third Called Session, 2006, authorizes the commissioner to adopt rules to implement that legislation.

The amendment implements the Texas Education Code, §25.039 and §42.106, and House Bill 1, Section 1.22, 79th Texas Legislature, Third Called Session, 2006.

§61.1012. Contracts and Tuition for Education Outside District.

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

(1) Home district--District of residence of a transferring student.

(2) Receiving district--District to which a student is transferring for the purpose of obtaining an education.

(3) Tuition--Amount charged to the home district by the receiving district to educate the transfer student.

(b) Tuition charge for transfer students. For the purposes of adjusting the property value of the home district as authorized by Texas Education Code (TEC), §42.106, [~~§42.1606,~~] the amount of tuition that may be attributed to a home district for a transfer student in payment for that student's education may not exceed an amount per enrollee calculated for each receiving district. The calculated limit applies only to tuition paid to a receiving district for the education of a student at a grade level not offered in the home district. Tuition may be set at a rate higher than the calculated limit if both districts enter a written agreement, but the calculated tuition limit will be used in the calculation of adjusted property value for the home district. The calculation will use [~~utilize~~] the most currently available data in an ongoing school year to determine the limit that applies to the subsequent school year. For purposes of this section, the number of students enrolled in a district will be appropriately adjusted to account for students ineligible for the

Foundation School Program funding and those eligible for half-day attendance.

(1) Excess maintenance and operations (M&O) revenue per enrollee. A district's excess M&O revenue per enrollee is defined as the sum of state aid in accordance with TEC, Chapter 42, Subchapters B, C, and F, plus the state aid generated in accordance with TEC, §42.2516(b), and any reductions to state aid made in accordance with TEC, §42.2516(g) and §42.2516(h). These state aid amounts are added to M&O tax collections, and [~~with~~] the sum is divided by enrollment to determine the amount of total state and local revenue per enrolled student. The amount of [~~, less the~~] state aid gained by the addition of one transfer student is subtracted from the total amount of state and local revenue per student to determine the revenue shortfall created by the addition of one student. M&O taxes exclude the local share of any lease purchases funded in the Instructional Facilities Allotment (IFA) as referenced in TEC, Chapter 46, Subchapter A.

(A) The data for this calculation are derived from the Public Education Information Management System (PEIMS) fall data submission (budgeted M&O tax collections and student enrollment) and the Legislative Payment Estimate (LPE) data (Foundation School Program (FSP) student counts and property value).

(B) The state aid gained by the receiving district from the addition of one transfer student is computed by the commissioner of education. The calculation assumes that the transfer student participates in the special programs at the average rate of other students in the receiving district.

(2) Excess debt revenue per enrollee. A district's excess debt revenue per enrollee is defined as interest [~~Interest~~] and sinking [~~Sinking~~] Fund (I&S) taxes budgeted to be collected that surpass the taxes equalized by the IFA pursuant to TEC, Chapter 46, Subchapter A, and the Existing Debt Allotment (EDA) pursuant to TEC, Chapter 46, Subchapter B, divided by enrollment.

(A) The local share of the IFA for bonds is [~~and the local share of the EDA are~~] subtracted from debt taxes budgeted to be collected as reported through PEIMS. The local share of the EDA is subtracted from debt taxes budgeted to be collected as reported through PEIMS only if the district receives a payment for the state share of EDA.

(B) The estimate of enrollment includes transfer students.

(3) Base tuition limit. The base tuition limit per transfer student for the receiving district is a percentage of its state and local entitlement per enrollee from both tiers of the FSP. The entitlement includes the Texas Education Agency's estimate for the current year for the total of allotments in accordance with TEC, Chapter 42, Subchapters B and C, plus the state and local shares of the guaranteed yield allotment (GYA) in accordance with TEC, Subchapter F, which includes additional state aid for tax reduction in accordance with TEC, §42.2516(b).

(A) For this purpose, the GYA is calculated as the product of the [~~elements~~] guaranteed level [~~leave~~] (GL) multiplied by weighted average daily attendance (WADA), then multiplied by district tax rate (DTR), and finally multiplied by 100 for tax effort that is described in TEC, §42.302(a-1) and (a-3), as applicable. [~~All applicable limits for DTR apply to the calculation as specified in §105.1011 of this title (relating to Distribution of Foundation School Fund), and GL is limited as directed in TEC, §42.152(t).~~]

(B) Beginning with the 2008-2009 school year, the GL paid in accordance with TEC, §42.302(a-1)(2), is applicable to the first $.06 by which the district's M&O tax rate exceeds the rate equal to the district's 2005 adopted tax rate and the state compression rate, as determined under TEC, §42.2516(a).

[~~(B) The applicable proportions of the entitlement are 20% in the 2000-2001 school year, 15% in the 2001-2002 school year, and 10% in the 2002-2003 school year and beyond.~~]

(C) For the 2006-2007 and 2007-2008 school years, the GL paid in accordance with TEC, §42.302(a-1)(2), is applicable to the first $.04 by which the district's M&O tax rate exceeds the rate equal to the district's 2005 adopted tax rate and the state compression rate, as determined under TEC, §42.2516(a). This subparagraph expires September 1, 2008.

(4) Calculated tuition limit. The calculated tuition limit is the sum of the excess M&O revenue per enrollee, the excess debt revenue per enrollee, and the base tuition limit, as calculated in subsections (b)(1), (b)(2), and (b)(3) of this section, respectively.

(5) Notification and appeal process. In the spring of each school year, the commissioner will provide each district with its calculated tuition limit and a worksheet with a description of the derivation process. A district may appeal to the commissioner if it can provide evidence that the use of projected student counts from the LPE in making the calculation is so inaccurate as to result in an inappropriately low authorized tuition charge and undue financial hardship. A district that used significant nontax [~~non-tax~~] sources to make any of its debt service payments during the base year for the computation may appeal to the commissioner to use projections of its tax collections for the year for which the tuition limit will apply. The commissioner's decision regarding an appeal is final.

(c) Maximum tuition amount in property value adjustment. The [~~For the 2000-2001 school year, the maximum amount of tuition that can be applied to the property value adjustment for school districts offering fewer than all grade levels in accordance with TEC, §42.106, may not exceed the greater of the amount per student computed in subsection (b)(4) of this section or the amount per student actually paid during the 1999-2000 school year if both districts adopt a written agreement specifying a rate that exceeds the computation in subsection (b)(4) of this section. Tuition may not exceed the rate paid in the 1999-2000 school year. For subsequent years, the~~] maximum tuition amount to be used in the adjustment to property value is limited to the amount per student computed in subsection (b)(4) of this section.

(1) The adjusted property values will be applied to the calculation of state aid as described in the following subparagraphs.

(A) Beginning with the 2008-2009 school year and subsequent school years, this adjustment to property values will be made in the calculation of state aid in accordance with TEC, §42.302(a-1)(1). Unadjusted property values will be used to calculate state aid in accordance with TEC, §42.302(a-1)(2) and (a-1)(3).

(B) For the 2006-2007 and the 2007-2008 school years, this adjustment to property values will be made in the calculation of state aid in accordance with TEC, §42.302(a-3)(1). Unadjusted property values will be used to calculate state aid in accordance with TEC, §42.302(a-3)(2) and (a-1)(3). This subparagraph expires September 1, 2008.

(C) The tax rate used to calculate the adjustment to property values will be adjusted to ensure that the property value adjustment provides sufficient state aid to cover the cost of the maximum tuition amount or the actual tuition amount, whichever is lesser.

(2) The adjustment to property values of the home district may not result in an increase of revenue to the home school district that

exceeds 10% of the total tuition paid to the receiving district to educate the transfer student(s).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 9, 2008.

TRD-200800120
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: February 24, 2008
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 32. STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

CHAPTER 741. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The State Board of Examiners for Speech-Language Pathology and Audiology (board) proposes amendments to §§741.1, 741.44, 741.45, 741.61, 741.62, 741.64, 741.81 - 741.85, 741.91, 741.101, 741.112, 741.161 - 741.164, 741.181, and 741.201, concerning the regulation and licensure of speech-language pathologists and audiologists.

BACKGROUND AND PURPOSE

The proposed rule amendments are intended to update the rules so that they reflect the board's current operational procedures in processing and approving licensure applications and to provide clarification of the rules, so that the intent is not ambiguous for license holders and the public. The rules are proposed for amendment so that the rules reflect current national standards relating to the regulation of speech-language pathologists and audiologists. Additionally, a new continuing education requirement in ethics is proposed as a means to enhance the quality of services provided to the public through increased professional and ethical competence of license holders.

SECTION-BY-SECTION SUMMARY

Amendments to §741.1 are proposed to delete the separate definitions of "dispense" and "fit" and to propose a new definition of "fitting and dispensing hearing instruments" intended to clarify and improve the section. The amendments to §741.44(a) are proposed to clarify that, if the speech-language pathologist does not have the required experience, the person may request review of the person's qualifications. The amendment to §741.44(b)(1)(A) is proposed to clarify that the person being supervised must hold a current license.

The amendment to §741.45 is proposed to remove obsolete language. The amendment to §741.61 is proposed to clarify acceptable documentation required from applicants who graduated from a college or university not accredited by the American Speech-Language-Hearing Association. The amendments to §741.62 and §741.64 are proposed to delete the provision that the requirements must be met within 10 years of the date of application; to clarify the responsibilities of a supervisor; to clarify the documentation required; to clarify the responsibilities and duties of licensed speech-language pathology assistants; and to update the rules to reflect national regulatory standards.

The amendments to §741.81 are proposed to clarify the educational documentation required from an applicant. The amendments to §741.82 are proposed to delete the provision that the requirements must be met within 10 years of the date of application; to clarify the documentation required; and to update the rules to reflect national regulatory standards. Amendments to §761.83 are proposed to provide that an applicant may submit certification by the American Board of Audiology as evidence that the applicant meets clinical experience and examination requirements for licensure. The amendments to §741.84 are proposed to delete the provision that the requirements must be met within 10 years of the date of application; and to update and clarify the section. The amendment to §761.85 is proposed to delete obsolete language.

The Amendment to §741.91 is proposed to clarify documentation required from an applicant. The amendment to §741.101 is proposed to delete obsolete language. The amendments to §741.112 are proposed for clarity and consistency with other proposed amendments.

The amendment to §741.161 is proposed to clarify the appropriate continuing education documentation required at the time of license renewal. Amendment to §741.162 is proposed to clarify documentation required from license holder and to require the biennial completion of continuing education in ethics, to be effective April 30, 2009. Amendments to §741.163 and §741.164 are proposed to correct citations and clarify the rules.

The amendments to §741.181 are proposed to delete obsolete language relating to provision licenses and licenses issued for a one-year term, and to clarify that the penalty fee for insufficient checks is $25 instead of $50.

The amendment to §741.201 is proposed to correct a typographical error.

FISCAL NOTE

Joyce Parsons, Executive Director, has determined that for each year of the first five years the sections are in effect, there will be a fiscal impact to state government as a result of enforcing or administering the sections as proposed. The reduction of the penalty fee for insufficient checks from $50 to $25 may result in a minor decrease in revenue collections. The number of checks returned as insufficient is currently fewer than five per year, and could vary from year to year. No fiscal impact to local government is expected.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS.

Ms. Parsons has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. 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.

PUBLIC BENEFIT

Ms. Parsons has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated

as a result of enforcing or administering the sections will be to ensure the effective regulation of speech-language pathologists and audiologists in Texas.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Joyce Parsons, Executive Director, State Board of Examiners for Speech-Language Pathology and Audiology, MC-1982, 1100 West 49th Street, Austin, Texas 78756. Comments may also be sent through e-mail to speech@dshs.state.tx.us. Please write "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. DEFINITIONS

22 TAC §741.1

STATUTORY AUTHORITY

The amendment is proposed under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendment affects Texas Occupations Code, Chapter 401.

§741.1. Definitions.

Unless the context clearly indicates otherwise, the words and terms below shall have the following meanings. Refer to Texas Occupations Code, §401.001, for definitions of additional words and terms.

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

[~~(5) Dispense--To directly or indirectly provide or deliver a product by U.S. Postal Service or any commercial delivery service to a consumer.~~]

(5) [~~(6)~~] Ear specialist--A licensed physician who specializes in diseases of the ear and is medically trained to identify the symptoms of deafness in the context of the total health of the client, and is qualified by special training to diagnose and treat hearing loss. Such physicians are also known as otolaryngologists, otologists, neurotologists, otorhinolaryngologists, and ear, nose, and throat specialists.

(6) [~~(7)~~] Extended absence--More than two consecutive working days for any single continuing education experience.

(7) [~~(8)~~] Extended recheck--Starting at 40 dB and going down by 10 dB until no response is obtained or until 20 dB is reached and then up by 5 dB until a response is obtained. The frequencies to be evaluated are 1,000, 2,000, and 4,000 hertz (Hz).

(8) Fitting and dispensing hearing instruments--The measurement of human hearing using professionally accepted practices to select, adapt, or sell a hearing instrument.

[~~(9) Fit--Initial selection, adjustment, programming, or modification of a personal amplification device or system.~~]

(9) [~~(10)~~] Health care professional--An individual required to be licensed under Texas Occupations Code, Chapter 401, or any person licensed, certified, or registered by the state in a health-related profession.

(10) [~~(11)~~] Hearing instrument--A device designed for, offered for the purpose of, or represented as aiding persons with or compensating for, impaired hearing.

(11) [~~(12)~~] Hearing screening--A test administered with pass/fail results for the purpose of rapidly identifying those persons with possible hearing impairment which has the potential of interfering with communication.

(12) [~~(13)~~] Sale or purchase--Includes the sale, lease or rental of a hearing instrument to a member of the consuming public who is a user or prospective user of a hearing instrument.

(13) [~~(14)~~] Under the direction of--The licensed speech-language pathologist or audiologist directly oversees the services provided and accepts professional responsibility for the actions of the personnel he or she agrees to direct.

(14) [~~(15)~~] Used hearing instrument--A hearing instrument that has been worn for any period of time by a user. However, a hearing instrument shall not be considered "used" merely because it has been worn by a prospective user as a part of a bona fide hearing instrument evaluation conducted to determine whether to select that particular hearing instrument for that prospective user, if such evaluation has been conducted in the presence of the dispenser or a hearing instrument health professional selected by the dispenser to assist the buyer in making such a determination.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER D. CODE OF ETHICS; DUTIES AND RESPONSIBILITIES OF LICENSE HOLDERS

22 TAC §741.44, §741.45

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendments affect Texas Occupations Code, Chapter 401.

§741.44. Requirements, Duties, and Responsibilities of Supervisors.

(a) A licensee must have three years of professional experience in providing direct client services in the area of licensure in order to supervise an intern or assistant. The licensee's practice when completing the 36-week full time internship may be counted toward the three years of experience. If the licensed speech-language pathologist [~~supervisor~~] does not have the required experience, he or she may submit a written request outlining his or her qualifications and the reason for the request. The board's designee shall evaluate the request and approve or disapprove it within 15 working days of receipt by the board.

(b) A supervisor of an intern or assistant shall:

(1) ensure that all services provided are in compliance with this chapter and the Act, such as verifying:

(A) the intern or assistant holds a current license;

(B) - (D) (No change.)

(2) - (4) (No change.)

(c) - (e) (No change.)

§741.45. Consumer Information and Display of License.

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

(c) A holder of [~~a provisional license or~~] a temporary certificate of registration shall display the certificate as issued by the board in the primary location of practice.

(d) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER E. REQUIREMENTS FOR LICENSURE OF SPEECH-LANGUAGE PATHOLOGISTS

22 TAC §§741.61, 741.62, 741.64

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendments affect Texas Occupations Code, Chapter 401.

§741.61. Requirements for a Speech-Language Pathology License.

(a) (No change.)

(b) The graduate degree shall be completed at a college or university which has a program accredited by the American Speech-Language Hearing Association Council on Academic Accreditation and holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) Original or certified copies of the conferred transcripts shall verify the applicant completed the following:

(A) - (C) (No change.)

(2) - (3) (No change.)

(4) An applicant who possesses a master's degree with a major in audiology and is pursuing a license in speech-language pathology may apply if the board has an original conferred transcript showing completion of a master's degree with a major in audiology on file and a letter from the program director or designee of the college or university stating that the individual completed enough hours to establish a graduate level major in speech-language pathology and would meet the academic and clinical experience requirements for a license as a speech-language pathologist.

(5) An applicant who graduated from a college or university not accredited by the American Speech-Language Hearing Association Council on Academic Accreditation shall submit an original signed letter from the American Speech-Language-Hearing Association (ASHA) stating the Clinical Certification Board accepted the course work and clinical experience. [~~have the American Speech-Language-Hearing Association Clinical Certification Board evaluate the course work and clinical experience earned to determine if acceptable.~~] The applicant shall bear all expenses incurred during the procedure.

(c) - (g) (No change.)

§741.62. Requirements for an Intern in Speech-Language Pathology License.

(a) An applicant for the intern in speech-language pathology license shall meet the requirements set out in the Act and §741.61(a) - (c) of this title (relating to Requirements for a Speech-Language Pathology License) [~~within 10 years of the date of application~~] for the intern license.

(b) (No change.)

(c) An original or certified copy of the conferred transcript is required and shall be evaluated under §741.61(b) of this title.

(d) Masters students. An applicant who successfully completed all academic and clinical requirements of §741.61(a) - (c) of this title but who has not had the degree officially conferred may be licensed as an intern in order to begin the supervised professional experience but shall submit verification from the program director or designee verifying the applicant has met all academic course work, clinical experience requirements, and completed a thesis or passed a comprehensive examination, if required, and is awaiting the date of next graduation for the degree to be conferred. This letter is in addition to the original or certified copy of the transcripts required in subsection (c) of this section.

(e) Doctoral students. An applicant who has successfully completed all academic and clinical requirements of §741.61(a) - (c) of this title but who has not had the degree officially conferred may be licensed as an intern in order to begin the supervised professional experience. The applicant shall submit an original or certified copy of a letter from the program director or designee verifying the applicant is enrolled in a

professionally recognized accredited doctoral program as approved by the board and has met all academic course work, clinical experience requirements, and completed a thesis or passed a comprehensive examination, if required, but has not had the degree officially conferred. This letter is in addition to the original or certified copy of the transcripts required in subsection (c) of this section.

(f) (No change.)

(g) An intern plan and agreement of supervision form shall be completed and signed by both the applicant and the licensed speech-language pathologist who agrees to assume responsibility for all services provided by the intern. The supervisor shall hold a valid Texas license in speech-language pathology and possess at least a master's degree with a major in one of the areas of communicative sciences and disorders. The supervisor shall have practiced for at least three years and shall submit a signed statement verifying that the supervisor has met this requirement. The licensee's practice when completing the 36-week full time internship may be counted toward the three years of experience. If the supervisor does not have the required experience the supervisor shall submit a written request outlining the supervisor's qualifications and justifications for the request for an exception. The board's designee shall evaluate the request and approve or disapprove it within 15 working days of receipt by the board.

(1) (No change.)

(2) In the event more than one licensed speech-language pathologist agrees to supervise the intern, each supervisor [~~the primary and secondary supervisors~~] shall be identified and the Intern Plan and Agreement of Supervision [~~supervisory~~] form must be signed by each supervisor.

(3) - (4) (No change.)

(h) The internship shall:

(1) - (3) (No change.)

(4) consist of a minimum of 36 weeks of full-time, or its part-time equivalent, of supervised professional experience in which clinical work has been accomplished in speech-language pathology. Full-time employment is defined as a minimum of 35 [~~30~~] hours per week in direct client clinical work. Part-time equivalent is defined as follows:

(A) (No change.)

(B) 15 - 21 [~~19~~] hours per week for over 72 weeks;

(C) 22 [~~20~~] - 28 [~~24~~] hours per week for over 60 weeks; or

(D) 29 [~~25~~] - 34 [~~29~~] hours per week for over 48 weeks;

(5) - (6) (No change.)

(i) (No change.)

(j) An intern who is employed full-time as defined by subsection (h)(3) of this section and wishes to practice at an additional site, shall submit the Intern Plan and Agreement of Supervision [~~intern plan and agreement of supervision~~] form for that site. [~~At the additional site, the intern shall receive the minimum of one hour of face-to-face supervision and one hour of indirect supervision per month.~~]

(k) During each segment of the internship, each [~~the primary~~] supervisor shall conduct a formal evaluation of the intern's progress in the development of professional skills. Documentation of this evaluation shall be maintained by both parties for three years or until the speech-language pathology license is granted. A copy of this documentation shall be submitted to the board upon request.

(l) Prior to implementing changes in the internship, approval from the board office is required.

(1) (No change.)

(2) Each [~~A primary~~] supervisor who ceases supervising an intern shall submit a report of completed internship form for the portion of the internship completed under the supervisor's supervision. This must be submitted within 30 days of the date the supervision ended.

[~~(3) Secondary supervisor(s) who cease supervising an intern shall submit written documentation of the intern's performance under his or her supervision. This must be submitted within 30 days of the date the supervision ended.~~]

(3) [~~(4)~~] If the intern changes his or her employer but the supervisor and the number of hours employed per week remain the same, the supervisor shall submit a signed statement giving the name, address and phone number of the new location. This must be submitted within 30 days of the date the change occurred.

(4) [~~(5)~~] If the number of hours worked per week changes but the supervisor and the location remain the same, the supervisor shall submit a signed statement giving the date the change occurred and the number of hours per week the intern is now working. A report of completed internship form shall be submitted for the past experience, clearly indicating the number of hours worked per week. This must be submitted within 30 days of the date the change occurred.

(m) - (o) (No change.)

§741.64. Requirements for an Assistant in Speech-Language Pathology License.

(a) An applicant for an assistant in speech-language pathology license shall meet the requirements set out in the Act, and this section [~~within 10 years of the date of application for the assistant license~~]. The applicant for the assistant license must:

(1) (No change.)

(2) have acquired the following [~~no fewer than 24 semester hours in speech-language pathology and/or audiology, at least 18 of which must be in speech-language pathology core curriculum as follows~~]:

(A) at least 24 semester hours in speech-language pathology and/or audiology;

[~~(A) at least three semester hours in language disorders;~~]

(B) and at least 18 semester hours of the 24 hours must be in speech-language pathology; and

[~~(B) at least three semester hours in speech disorders; and~~]

(C) at least three semester hours in language disorders;

[~~(C) excludes clinical experience and course work such as special education, deaf education, or sign language; and~~]

(D) at least three semester hours in speech disorders; and

(E) excludes clinical experience and course work such as special education, deaf education, or sign language; and

(3) (No change.)

(b) The baccalaureate degree shall be completed at a college or university which has a program accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation or

holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) Original or certified copy of the conferred transcripts shall be submitted and reviewed as follows:

(A) only course work earned [~~completed~~] within the past 10 years with a grade of "C" or above is acceptable;

(B) - (C) (No change.)

(2) (No change.)

(c) - (d) (No change.)

(e) An applicant who has not acquired the hours referenced in subsection (b)(3) of this section shall not meet the minimum qualifications for the assistant license. Other than acquiring the 25 hours of clinical observation and the 25 hours of clinical assisting experience through an accredited college or university, there are no other exemptions in the Act, for an applicant to acquire the hours. The applicant shall first obtain the assistant license by submitting the forms, fees, and documentation referenced in §741.112(e) of this title (relating to Required Application Materials) and include a clinical deficiency plan to acquire the clinical observation and clinical assisting experience hours lacking.

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

(5) Board staff shall evaluate the documentation required in paragraph (4) of this subsection and inform the licensed assistant and licensed speech-language pathologist who will provide the licensed assistant with the training [~~trainer~~] if acceptable.

(6) A licensed [~~An~~] assistant may continue to practice under supervision of the licensed speech-language pathologist who will provide the licensed assistant with the training [~~trainer~~] while the board office evaluates the documentation identified in paragraph (4) of this subsection.

(7) (No change.)

(f) A supervisory responsibility statement form shall be completed and signed by both the applicant and the licensed speech-language pathologist who agrees to assume responsibility for all services provided by the assistant. The supervisor shall have practiced for at least three years and shall submit a signed statement verifying he or she has met this requirement. If the supervisor does not have the required experience, the supervisor shall submit a written request outlining the supervisor's qualifications and a justification for the request for an exception. The board's designee shall evaluate the request and approve or disapprove it within 15 working days of receipt by the board.

(1) (No change.)

(2) In the event more than one licensed speech-language pathologist agrees to supervise the assistant, each [~~the primary and secondary~~] supervisor shall be identified on the supervisor responsibility statement.

(3) - (5) (No change.)

(g) A licensed speech-language pathologist shall assign duties and provide appropriate supervision to the assistant.

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

(5) An exception to paragraph (3) of this subsection may be requested. The supervising speech-language pathologist shall submit a proposed plan of supervision for review by the board's designee. Within 15 working days of receipt of the request, the board's designee shall approve or disapprove [~~accept or reject~~] the plan. The plan shall be for not more than one year's duration and shall include:

(A) the name of the licensed speech-language pathology assistant;

(B) the name and signature of the supervising speech-language pathologist [~~supervisor~~];

(C) - (F) (No change.)

(6) If the exception referenced in paragraph (5) of this subsection is approved and the reason continues to exist, the licensed supervising speech-language pathologist shall annually resubmit a request to be evaluated by the board's designee. Within 15 working days of receipt of the request, the board's designee shall approve or disapprove [~~reject~~] the plan.

(7) (No change.)

(h) (No change.)

(i) A licensed speech-language pathology assistant may represent special education and speech pathology at Admission, Review and Dismissal (ARD) meetings with the following stipulations.

(1) The speech-language pathology assistant shall have written documentation of approval from the licensed, board approved speech-language pathologist [~~SLP~~] supervisor.

(2) (No change.)

(3) The speech-language pathology assistant may attend, with written approval of the supervising speech-language pathologist, a student's annual review ARD meeting if the meeting involves a student for whom the licensed speech-language pathology assistant provides services. If an assistant attends a meeting as provided by this rule, the supervising speech-language pathologist is not required to attend the meeting. A supervising speech-language pathologist must attend an ARD meeting if the purpose of the meeting is to develop a student's initial individual educational plan or if the meeting is to consider the student's dismissal, unless the supervising speech-language pathologist has submitted their recommendation in writing on or before the date of the meeting.

(4) The speech-language pathology assistant shall present Individual Educational Plan (IEP) goals and objectives that have been developed by the supervising speech-language pathologist [~~SLP~~] and reviewed with the parent by the speech-language pathologist [~~SLP~~].

(5) The speech-language pathology assistant shall discontinue participation in the ARD meeting, and contact the supervising speech-language pathologist [~~SLP~~], when questions or changes arise regarding the IEP Document.

(j) (No change.)

(k) The licensed speech-language pathology assistant shall not:

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

(5) attend staffing meeting or ARD without the licensed assistant's supervising speech-language pathologist [~~supervisor~~] being present except as specified in this section;

(6) - (17) (No change.)

(l) (No change.)

(m) The board may audit a random sampling of licensed speech-language pathology assistants for compliance with this section and §741.44 of this title (relating to Requirements, Duties, and Responsibilities of Supervisors).

(1) (No change.)

(2) Upon receipt of an audit notification, the licensed speech-language pathology assistant and the licensed speech-language pathologist who agreed to accept responsibility for the services provided by the assistant shall mail the requested proof of compliance to the board.

(3) The licensed speech-language pathology assistant and the supervising speech-language pathologist [~~A licensee and supervisor~~] shall comply with the board's request for documentation and information concerning compliance with the audit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER F. REQUIREMENTS FOR LICENSURE OF AUDIOLOGISTS

22 TAC §§741.81 - 741.85

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendments affect Texas Occupations Code, Chapter 401.

§741.81. Requirements for an Audiology License.

(a) (No change.)

(b) The graduate degree shall be completed at a college or university that has a program accredited by the American Speech-Language Hearing Association Council on Academic Accreditation and holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) Original or certified copies of the conferred transcripts shall verify the applicant completed the following [~~with a grade of "C" or above~~]:

(A) - (C) (No change.)

(2) - (3) (No change.)

(4) An applicant who possesses a master's degree with a major in speech-language pathology and is pursuing a license in audiology may apply if the board has an original conferred transcript showing completion of a master's degree with a major in speech-language pathology on file and a letter from the program director or designee of the college or university stating that the individual completed enough hours to establish a graduate level major in audiology and would meet the academic and clinical experience requirements for a license as an audiologist.

(5) (No change.)

(c) - (g) (No change.)

§741.82. Requirements for an Intern in Audiology License.

(a) An applicant for the intern in audiology license shall meet the requirements set out in the Act and §741.81(a) - (c) of this title (relating to Requirements for an Audiology License) [~~within 10 years of the date of application for the intern license~~].

(b) (No change.)

(c) An original or certified copy of the conferred transcript is required and shall be evaluated under §741.81(b) of this title.

(d) An applicant who has successfully completed all academic and clinical requirements of §741.81(a) - (c) of this title but who has not had the degree officially conferred may be licensed as an intern in order to begin the supervised professional experience but shall submit an original or certified copy of a letter from the program director or designee verifying the applicant has met all academic course work, clinical experience requirements, and completed a thesis or passed a comprehensive examination, if required, and is awaiting the date of next graduation for the degree to be conferred. This letter is in addition to the original or certified copy of the conferred transcripts required in subsection (c) of this section.

(e) An applicant who has successfully completed all academic and clinical requirements of §741.81(a) - (c) of this title but who has not had the degree officially conferred may be licensed as an intern in order to begin the supervised professional experience. The applicant shall submit an original or certified copy of a letter from the program director or designee verifying the applicant is enrolled in a professionally recognized accredited doctor of audiology (Au.D.) program as approved by the board and has met all academic course work, clinical experience requirements, and completed a thesis or passed a comprehensive examination, if required, but has not had the degree officially conferred. This letter is in addition to the original or certified copy of the conferred transcripts required in subsection (c) of this section.

(f) An applicant whose graduate [~~master's~~] degree is received at a college or university accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation will receive automatic approval of the course work and clinical experience if the program director or designee verifies that all requirements as outlined in §741.81(a) - (c) of this title have been met and review of the transcript shows that the applicant has successfully completed at least 24 semester credit hours acceptable toward a graduate degree in the area of audiology with six hours in speech-language pathology.

(g) (No change.)

(h) The internship shall:

(1) - (3) (No change.)

(4) consist of 36 weeks of full-time, or its part-time equivalent, of supervised professional experience in which bona fide clinical work has been accomplished in audiology. Full-time employment is defined as a minimum of 35 [~~30~~] hours per week in direct client clinical work. Part-time equivalent is defined as follows:

(A) (No change.)

(B) 15 - 21 [~~19~~] hours per week for over 72 weeks;

(C) 22 [~~20~~] - 28 [~~24~~] hours per week for over 60 weeks; or

(D) 29 [~~25~~] - 34 [~~29~~] hours per week for over 48 weeks;

(5) - (6) (No change.)

(i) - (m) (No change.)

§741.83. Waiver of Clinical and Examination Requirements for Audiologists.

An applicant who currently holds the ASHA Certificate of Clinical Competence (CCC) or the American Board of Audiology (ABA) certification may submit official documentation from ASHA or ABA [~~of the CCC~~] as evidence that the applicant meets the clinical experience and examination requirements as referenced in [~~the Act and~~] §741.81 of this title (relating to Requirements for an Audiology License.)

§741.84. Requirements for an Assistant in Audiology License.

(a) An applicant for an assistant in audiology license shall meet the requirements set out in the Act and this section [~~within 10 years of the date of application for the assistant license~~].

(b) (No change.)

(c) The baccalaureate degree shall be completed at a college or university that has a program accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation or holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) Original or certified copy of the conferred transcripts shall be submitted and reviewed as follows:

(A) only course work earned [~~completed~~] within the past 10 years with a grade of "C" or above is acceptable;

(B) - (C) (No change.)

(2) (No change.)

(d) - (e) (No change.)

(f) An applicant who has not acquired the hours referenced in subsection (b)(3) of this section shall not meet the minimum qualifications for the assistant license. Other than acquiring the 25 hours of clinical observation and the 25 hours of clinical assisting experience through an accredited college or university, there are no other exemptions in the Act for an applicant to acquire the hours. The applicant shall first obtain the assistant license by submitting the forms, fees, and documentation referenced in §741.112(e) of this title (relating to Required Application Materials) and include a clinical deficiency plan to acquire the clinical observation and clinical assisting experience hours lacking.

(1) The licensed audiologist who will provide the assistant with the training to acquire these hours shall submit:

(A) (No change.)

(B) a clinical deficiency plan that shall include the following:

(i) (No change.)

(ii) name, qualifications, and signature of the licensed audiologist who will provide the licensed assistant with the training [~~trainer~~];

(iii) - (v) (No change.)

(2) - (3) (No change.)

(4) Immediately upon completion of the clinical deficiency plan, the licensed audiologist who is providing the licensed assistant with the training [~~trainer~~] identified in the plan shall submit:

(A) - (C) (No change.)

(5) - (6) (No change.)

(7) A licensed [~~An~~] assistant may continue to practice under the supervision of the licensed audiologist who is providing the licensed assistant with the training [~~trainer~~] while the board office evaluates the documentation identified in paragraphs (4) and (5) of this subsection.

(8) (No change.)

(g) (No change.)

(h) A licensed audiologist shall assign duties and provide appropriate supervision to the assistant.

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

(5) An exception to paragraph (3) of this subsection may be requested. The supervising audiologist shall submit a proposed plan of supervision for review by the board's designee. The plan shall be for not more than one year's duration and shall include:

(A) (No change.)

(B) the name and signature of the supervising audiologist [~~supervisor~~];

(C) - (F) (No change.)

(6) - (7) (No change.)

(i) - (l) (No change.)

§741.85. Requirements for a Temporary Certificate of Registration in Audiology.

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

[~~(c) The temporary certificate of registration does not include a provision to allow the holder to fit and dispense hearing instruments.~~]

(c) [~~(d)~~] A temporary certificate of registration is not renewable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER G. REQUIREMENTS FOR DUAL LICENSURE AS A SPEECH-LANGUAGE PATHOLOGIST AND AN AUDIOLOGIST

22 TAC §741.91

STATUTORY AUTHORITY

The amendment is proposed under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendment affects Texas Occupations Code, Chapter 401.

§741.91. Requirements for Dual Licenses in Speech-Language Pathology and Audiology.

(a) An applicant for dual licenses in speech-language pathology and in audiology as referenced in the Act shall meet the requirements set out in:

(1) (No change.)

(2) Section 741.61 of this title (relating to Requirements for a Speech-Language Pathology License) and §741.81 of this title (relating to Requirements for an Audiology License) with the following exceptions.

(A) (No change.)

(B) Instead of the number of hours of supervised clinical observation and experience referenced in §741.61(c) of this title and §741.81(c) of this title, the applicant shall have completed at least:

(i) (No change.)

(ii) 600 minimum graduate credit hours of clinical experience with at least 300 hours in speech-language pathology under direction of a graduate [~~master's~~] degreed licensed speech-language pathologist and at least 300 hours in audiology under direction of a graduate [~~master's~~] degreed licensed audiologist.

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

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SUBCHAPTER H. FITTING AND DISPENSING OF HEARING INSTRUMENTS

22 TAC §741.101

STATUTORY AUTHORITY

The amendment is proposed under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendment affects Texas Occupations Code, Chapter 401.

§741.101. Registration of Audiologists and Interns in Audiology to Fit and Dispense Hearing Instruments.

(a) The audiology license [~~and provisional audiology license~~] constitute registration to fit and dispense hearing instruments.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER I. APPLICATION PROCEDURES

22 TAC §741.112

STATUTORY AUTHORITY

The amendment is proposed under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendment affects Texas Occupations Code, Chapter 401.

§741.112. Required Application Materials.

(a) An applicant applying for a speech-language pathology or audiology license under §741.61 of this title (relating to Requirements for a Speech-Language Pathology License) or §741.81 of this title (relating to Requirements for an Audiology License) shall submit the following:

(1) - (2) (No change.)

(3) an original or certified copy of the conferred transcript(s) of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders; however, an applicant who graduated from a college or university with a program not accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation, shall submit an original signed letter from the American Speech-Language-Hearing Association stating the Clinical Certification Board accepted the course work and clinical experience;

(4) - (6) (No change.)

(b) An applicant applying for an intern in speech-language pathology license under §741.62 of this title (relating to Requirements for an Intern in Speech-Language Pathology License) or an intern in audiology license under §741.82 of this title (relating to Requirements for an Intern in Audiology License) shall submit the following:

(1) - (2) (No change.)

(3) an original or certified copy of the conferred transcript(s) of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders; however, an applicant who graduated from a college or university with a program not accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation, shall submit an original signed letter from the American Speech-Language-Hearing Association stating the Clinical Certification Board accepted the course work and clinical experience;

(4) if the graduate [~~master's~~] degree has not been officially conferred, an original or certified copy of transcript(s) and verification from the university attended verifying the applicant successfully completed all requirements for the graduate [~~master's~~] degree, and is only awaiting the date of next graduation for the degree to be conferred;

(5) - (6) (No change.)

(c) An applicant who holds the American Speech-Language-Hearing Association certificate of clinical competence applying for licensure under §741.63 of this title (relating to Waiver of Clinical and Examination Requirements for Speech-Language Pathologists) or §741.83 of this title (relating to Waiver of Clinical and Examination Requirements for Audiologists) shall submit the following:

(1) - (2) (No change.)

(3) an original or certified copy of a signed letter from the American Speech-Language-Hearing Association (ASHA) or the American Board of Audiology (ABA) which verifies the applicant currently holds the certificate of clinical competence or board certification in the area in which the applicant has applied for license; and

(4) an original or certified copy of the conferred transcript(s) of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders; however, an applicant whose transcript is in a language other than English shall submit an original evaluation form from an approved credentialing agency.

(d) An applicant applying for an assistant in speech-language pathology license under §741.64 of this title (relating to Requirements for an Assistant in Speech-Language Pathology License) or an assistant in audiology license under §741.84 of this title (relating to Requirements for an Assistant in Audiology License) shall submit the following:

(1) - (3) (No change.)

(4) an original or certified copy of the conferred transcript(s) of relevant course work which also verifies that the applicant possesses a baccalaureate degree with an emphasis in speech-language pathology and/or audiology;

(5) - (6) (No change.)

(e) An applicant applying for a speech-language pathology temporary certificate of registration under §741.65 of this title (relating to Requirements for a Temporary Certificate of Registration in Speech-Language Pathology) or an audiology temporary certificate of registration under §741.85 of this title (relating to Requirements for a Temporary Certificate of Registration in Audiology) shall submit the following:

(1) - (2) (No change.)

(3) an original or certified copy of the conferred transcript(s) of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders; however, an applicant who graduated from a college or university with a program not accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation, shall submit an original signed letter from the American Speech-Language-Hearing Association stating the Clinical Certification Board accepted the course work and clinical experience;

(4) - (6) (No change.)

(f) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Kerry Ormson, Ed.D., Au.D.
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
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For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER L. LICENSE RENEWAL AND CONTINUING EDUCATION

22 TAC §§741.161 - 741.164

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendments affect Texas Occupations Code, Chapter 401.

§741.161. Renewal Procedures.

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

(g) The board office shall not consider a license to be renewed until the following has been received and found acceptable:

(1) - (2) (No change.)

(3) continuing education audit documentation, if selected for continuing education audit [~~if selected for audit as defined in subsection (o) of this section, the record of continuing education hours earned/used/available/dropped form, referred to as the CE log, which covers at least the past three renewal periods and verification of approved continuing education hours~~].

(4) (No change.)

(h) - (t) (No change.)

§741.162. Requirements for Continuing Professional Education.

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

(c) [~~Ten clock hours (one CEU) shall be required to renew a license issued for a one-year term.~~] Twenty clock hours (two CEUs) shall be required to renew a license issued for a two-year term. The holder of dual licenses, meaning both a speech-language pathology license and an audiology license, shall be required to earn [~~15 clock hours (1.5 CEUs) to renew a license issued for a one-year term and~~] 30 clock hours (three CEUs) to renew a license issued for a two-year term. Effective April 30, 2009, a license holder must complete a minimum of two clock hours (0.2 CEUs) in ethics as part of the continuing education requirement.

(d) - (j) (No change.)

(k) Proof of completion of a valid continuing education experience shall include the name of the licensee, the sponsor of the event, the title and date of the event, and the number of continuing education hours earned. Acceptable verification shall be:

(1) - (3) (No change.)

(4) a letter or form from the American Medical Association if earned under subsection (h) of this section stating the event was approved for Category I; and

[(5) an original or certified copy of the score if earned under subsection (i) of this section; and]

(5) [(6)] if the continuing education event was earned under subsection (h) of this section, a letter or form from the board office granting prior board approval of the event in addition to documentation listed in paragraphs (3) and (4) of this subsection. If this approval was not obtained, the licensee shall not include the event on the documentation. The licensee shall comply with the requirements set out in subsection (h) of this section and, if approval is granted, add the event to the documentation.

(l) - (m) (No change.)

§741.163. Inactive Status.

(a) - (h) (No change.)

(i) The inactive licensee shall earn 10 continuing education hours (1 CEU) or 15 hours (1.5 CEUs) for holders of dual speech-language pathology and audiology licenses during the 12-month period preceding the request to reactivate the license unless hours were accrued under §741.162(i) [(j) or (k)] of this title and are available for use when the request for reactivation is received by the board.

(j) - (n) (No change.)

§741.164. Late Renewal of a License.

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

(c) The following shall be submitted to renew a license after expiration of the grace period:

(1) - (2) (No change.)

(3) Continuing Education [CE] documentation as required by §741.162(i) [(l)] of this title (relating to Requirements for Continuing Professional Education); and

(4) verification of continuing education hours earned as required by §741.162(k) [(m)] of this title.

(d) (No change.)

(e) Continuing education hours accrued under §741.162(i) [(j) or (k)] of this title may be used if the hours are available for use when the request for renewal is received by the board.

(f) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER M. FEES AND PROCESSING PROCEDURES

22 TAC §741.181

STATUTORY AUTHORITY

The amendment is proposed under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The proposed amendment affects Texas Occupations Code, Chapter 401.

§741.181. Schedule of Fees.

(a) All fees paid to the board are non-refundable. For all applications and renewal applications, the board is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online. For all applications and renewal applications, the board is authorized to collect fees to fund the Office of Patient Protection within the Health Professions Council, as required by Occupations Code, §101.307 (relating to Health Professions Council Funding of Office.) The schedule of fees is as follows:

(1) application and initial license fee:

(A) (No change.)

(B) an intern license--$75 [for a one year license].

[(2) provisional application and initial license fee--$75;]

(2) [(3)] temporary certificate of registration fee--$55;

(3) [(4)] license renewal fee--$100; [:]

[(A) $50 for one year license;]

[(B) $100 for a two year license;]

(4) [(5)] dual license fees as a speech-language pathologist and audiologist--each license must be renewed separately and fees will be determined separately:

(5) [(6)] duplicate license, certificate, or registration fee--$10;

(6) [(7)] inactive status fee--$45;

(7) [(8)] license verification fee--$10;

(8) [(9)] late renewal penalty fee--an amount equal to the renewal fee(s), with a maximum of three renewal fees, plus the examination fee;

(9) [(10)] examination fee--the amount charged by the board's designee administering the examination; and

(b) (No change.)

(c) An applicant whose check for the application and initial license fee is returned marked insufficient funds, account closed, or payment stopped shall be allowed to reinstate the application by remitting to the board a money order or check for guaranteed funds within 30 days of the date of the receipt of the board's notice. Otherwise, the application and the approval shall be invalid. A penalty fee of $25 [$50], in addition to the amount of the check, must be included with the payment remitted to the board office.

(d) A licensee whose check for the renewal fee is returned marked insufficient funds, account closed, or payment stopped shall

remit to the board a money order or check for guaranteed funds within 30 days of the date of receipt of the board's notice. Otherwise, the license shall not be renewed. If a renewal card has already been issued, it shall be invalid. If the guaranteed funds are received after expiration of the 60-day grace period, a late renewal penalty fee shall be assessed. A penalty fee of $25 [~~$50~~], in addition to the amount of the check, must be included with the payment remitted to the board office.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER N. COMPLAINTS, VIOLATIONS, PENALTIES, AND DISCIPLINARY ACTIONS

22 TAC §741.201

STATUTORY AUTHORITY

The amendment is proposed under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The proposed amendment affects Texas Occupations Code, Chapter 401.

§741.201. Suspension of License Relating to Child Support and Child Custody.

(a) - (e) (No change.)

(f) An individual who continues to engage in the practice of speech-language pathology or audiology [~~counseling~~] or continues to hold himself out to the public as a license holder after the issuance of a court or attorney general's order suspending the license is liable for the same civil and criminal penalties provided for engaging in the prohibited activity without a license or while a license is suspended as any other license holder of the board.

(g) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

28 TAC §7.18

The Texas Department of Insurance proposes amendments to §7.18, concerning Statements of Statutory Accounting Principles (SSAPs) that provide guidance to insurers and health maintenance organizations (HMOs), including accountants employed or retained by these entities, on how to properly record business transactions for the purpose of accurate statutory reporting. These insurers and HMOs are referred to collectively as "carriers" in this proposal. SSAPs provide a nationwide standard method of accounting, which most carriers are required to use for statutory financial reporting guidance, thus providing a more consistent reporting of financial information for carriers. However, SSAPs do not preempt individual state legislative or regulatory authority. SSAPs are adopted by the National Association of Insurance Commissioners (NAIC) through its maintenance process, which involves preparation of the SSAPs, exposure to public comment, and adoption by the NAIC. The Accounting Practices and Procedures Manual (Manual), published by the NAIC, is a comprehensive guide to statutory accounting principles and includes the SSAPs that have been adopted by the NAIC. SSAPs provide the source of statutory accounting principles for the Department when examining and analyzing financial reports and for conducting statutory examinations and rehabilitations of carriers licensed in Texas, except where otherwise provided by law. The proposed amendments are necessary to clarify some of the exceptions specified in §7.18. Specifically, the proposed amendments clarify, in amended subsection (a), that Texas statutes; Department rules; and directives, instructions, and orders of the Commissioner preempt any contrary provisions in the Manual, and clarify which Department rules specifically preempt any contrary provisions in the Manual. Proposed new §7.18(c)(1) is necessary to adopt new SSAP No. 97 as an addition to the Manual; SSAP No. 97 was adopted by the NAIC on December 2, 2007 and is effective January 1, 2008. It replaces SSAP No. 88 and establishes accounting principles for investments in subsidiary, controlled and affiliated entities (SCA entities). SSAP No. 97 also clarifies the number and type of audits required for investments in SCA entities, allows combined audits, permits foreign Generally Accepted Accounting Principles (GAAP) basis audits with audited reconciliation to U.S. GAAP, and does not require a separate audit of a downstream holding company if certain criteria are met. New paragraph (2) is proposed to be added to subsection (c) to adopt nonsubstan-

tive modifications to SSAP Nos. 1, 10, 22, 26, 55, 56, 61, 62, 72, and 80. These nonsubstantive modifications, which were made by the NAIC in calendar year 2007, clarify language or change disclosures, appendices, or other material referenced in SSAPs already included in the March 2007 version of the Manual. Proposed amendments to paragraph (3) of subsection (c) (paragraph (1) in existing rules) clarify the exception to SSAP No. 96 by stating that intercompany balances must be settled within 90 days of the period for which the services are being billed; otherwise, such balances shall be nonadmitted. The proposal also deletes paragraph 5 of subsection (c) because it is a transitional provision that relates to certain items expensed on or before December 31, 2000, and thus, is no longer necessary. As a result of the addition of proposed new paragraphs (1) and (2) to the existing subsection (c) and the deletion of existing paragraph 5 of subsection (c), existing paragraphs (1) - (6) of subsection (c) are redesignated as paragraphs (3) - (7). The proposed amendment to subsection (d) increases from less than $5 million to less than $6 million the amount of annual direct written premiums that will qualify a farm mutual insurance company, statewide mutual assessment company, local mutual aid association, or mutual burial association for exemption from compliance with the Manual. This expanded exemption is proposed to make the threshold for the exemption consistent with the "less than $6 million in annual gross receipts" threshold for defining a small business in accordance with the Government Code §2006.001(2) (Agency Actions Affecting Small Businesses), as amended in HB 3430, 80th Legislature, effective October 1, 2007.

FISCAL NOTE. Danny Saenz, Senior Associate Commissioner, Financial Program, has determined that for the first five years the amended section is in effect, there will be no fiscal implications for state or local government as a result of this amendment, and there will be no effect on local employment or the local economy.

PUBLIC BENEFIT/COST NOTE. Mr. Saenz has also determined that for each year of the first five years the amended section is in effect, the public benefit will be the more efficient financial solvency regulation of insurance in general and a decrease in costs to carriers that are required to comply with accounting requirements in multiple states. In particular, the Department will be able to more efficiently and effectively utilize existing resources in the analysis and examination of the financial condition of carriers to better ensure financial solvency. The adoption of the updates to the March 2007 version of the Manual will result in a more consistent regulatory environment and will provide a central source for accounting guidance. The proposed amendments will not result in any additional costs to those costs that are required of carriers, regardless of size, under the existing rules. The proposed amendments to §7.18(a) clarify that Texas statutes; Department rules; and directives, instructions, and orders of the Commissioner preempt any contrary provisions in the Manual, and clarify which Department rules specifically preempt any contrary provisions in the Manual. Proposed new §7.18(c)(1) will adopt new SSAP No. 97 to replace SSAP No. 88 and establishes accounting principles for investments in subsidiary, controlled and affiliated entities; clarifies the number and type of audits required for investments in SCA entities; allows combined audits; permits foreign GAAP basis audits with audited reconciliation to U.S. GAAP; and does not require a separate audit of a downstream holding company if certain criteria are met. Proposed new §7.18(c)(2) will adopt nonsubstantive modifications to SSAP Nos. 1, 10, 22, 26, 55, 56, 61, 62, 72, and 80 to clarify language or update reference materials, including disclosures and appendices, to SSAPs already included in the March 2007 version of the Manual. The proposed amendment to §7.18(c)(3) clarifies the exception to SSAP No. 96 by stating that intercompany balances must be settled within 90 days of the period for which the services are being billed; otherwise, such balances shall be nonadmitted. The proposed amendment to §7.18(d) increases from $5 million to $6 million the amount of annual direct written premiums that will qualify a farm mutual insurance company, statewide mutual assessment company, local mutual aid association, or mutual burial association for exemption from compliance with the Manual.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In accordance with the Government Code §2006.002, the Department has determined that the proposed amendments will not result in any additional costs to those costs that are required of small and micro business carriers under the existing rules for the reasons specified in the Public Benefit/Cost Note part of this proposal. Nevertheless, the rule exempts certain carriers that have historically accounted for their business on a cash basis and have historically posed relatively insubstantial insolvency-related risk to consumers, other carriers, and the state's general economic welfare from compliance with the Manual. Proposed §7.18(d) as amended exempts any farm mutual insurance company, statewide mutual assessment company, local mutual aid association, or mutual burial association with less than $6 million in annual direct written premiums from compliance with the Manual. Under the existing rule, any farm mutual insurance company, statewide mutual assessment company, local mutual aid association, or mutual burial association with less than $5 million in annual direct written premiums are exempt from compliance with the Manual. Because of the types or methods of operations of these types of carriers, they are more likely to be small or micro business carriers. Under the Government Code §2006.002(c), before adopting a rule that may have an adverse economic effect on small or micro businesses, an agency is required to prepare in addition to an economic impact statement a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Because the Department has determined that the routine costs to comply with this proposal, i.e., compliance with the Manual in financial filings, will not have an adverse economic effect on small or micro business carriers, the Department is not required to consider alternative methods of achieving the purpose of these requirements in the proposed rule.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on February 25, 2008. All comments should be submitted to Gene C. Jarmon, General Counsel and Chief Clerk, Texas Department of Insurance, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted simultaneously to Danny Saenz, Senior Associate Commissioner, Financial Program, Texas Department of Insurance, Mail Code 305-2A, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing on the proposal should be submitted separately to the Office of the Chief Clerk

before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The amendments are proposed under the Insurance Code Chapters 32, 36, 401, 404, 421, 425, 426, 441, 802, 823, 841, 843, 861, and 862, and §36.001. Section 401.051 and §401.056 mandate that the Department examine the financial condition of each carrier organized under the laws of Texas or authorized to transact the business of insurance in Texas and adopt by rule procedures for the filing and adoption of examination reports. Subsection 404.005(a)(2) authorizes the Commissioner to establish standards for evaluating the financial condition of an insurer. Section 421.001(c) requires the Commissioner to adopt each current formula recommended by the NAIC for establishing reserves for each line of insurance. Section 425.162 authorizes the Commissioner to adopt rules, minimum standards, or limitations that are fair and reasonable as appropriate to supplement and implement the Insurance Code Chapter 425 Subchapter C. Section 426.002 provides that reserves required by §426.001 must be computed in accordance with any rules adopted by the Commissioner to adequately protect insureds, secure the solvency of the workers' compensation insurance company, and prevent unreasonably large reserves. Section 441.005 authorizes the Commissioner to adopt reasonable rules as necessary to implement and supplement Chapter 441 of the Insurance Code (Supervision and Conservatorship). Section 32.041 requires the Department to furnish to the companies the required financial statement forms. Section 802.001 authorizes the Commissioner, as necessary to obtain an accurate indication of the company's condition and method of transacting business, to change the form of any annual statement required to be filed by any kind of insurance company. Section 823.012 authorizes the Commissioner to issue rules and orders necessary to implement the provisions of Chapter 823 of the Insurance Code (Insurance Holding Company Systems). Section 843.151 authorizes the Commissioner to promulgate rules as are necessary to carry out the provisions of Chapter 843 of the Insurance Code (Health Maintenance Organizations). Section 843.155 requires HMOs to file annual reports with the Commissioner, which include a financial statement of the HMO, certified by an independent public accountant. Sections 841.004(b), 861.255(b) and 862.001(c) authorize the Commissioner to adopt rules defining electronic machines and systems, office equipment, furniture, machines and labor saving devices, and the maximum period for which each such class may be amortized. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code Chapters 32, 401, 404, 421, 425, 426, 441, 802, 823, 841, 843, 861, and 862.

§7.18. National Association of Insurance Commissioners Accounting Practices and Procedures Manual.

(a) The purpose of this section is to adopt statutory accounting principles, which will provide insurers and health maintenance organizations, including accountants employed or retained by these entities, guidance as how to properly record business transactions for the purpose of accurate statutory reporting. The March 2007 version of the Accounting Practices and Procedures Manual (Manual) published by the National Association of Insurance Commissioners (NAIC) will be utilized as the guideline for statutory accounting principles in Texas to the extent the Manual does not conflict with provisions of the Insurance Code or rules of the department. The Commissioner reserves all authority and discretion to resolve any accounting issues in Texas. When making a determination on the proper accounting treatment for an insurance or health plan transaction, the Commissioner shall refer to the sources in paragraphs (1) - (6) of this subsection in the respective order of priority listed. The sources in paragraphs (1) - (3) preempt any contrary provisions in the Manual. The department rules that preempt any contrary provisions in the Manual, include, but are not limited to: [~~Furthermore,~~] §§3.1501 - 3.1505, 3.1601 - 3.1608, [~~3.1605, 3.1606~~], 3.4505(f), 3.6101, 3.6102, 3.7001 - 3.7009, [~~3.7004~~], 3.9101 - 3.9106, 3.9401 - 3.9404, 7.7, 7.85 and 11.803 of this title (relating to Annuity Mortality Tables, Actuarial Opinion and Annuities, General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves, Minimum Reserve Standards for Individual and Group Accident and Health Insurance, 2001 CSO Mortality Table, Preferred Mortality Tables, General Requirements, Statement of Actuarial Opinion Based on an Asset Adequacy Analysis, Contract Reserves, Subordinated Indebtedness, Surplus Debentures, Surplus Notes, Premium Income Notes, Bonds, or Debentures, and Other Contingent Evidences of Indebtedness, Audited Financial Reports, and Investments, Loans, and Other Assets), preempt any contrary provisions in the Manual.

(1) Texas statutes;

(2) department rules;

(3) directives, instructions, and orders of the Commissioner;

(4) the Manual;

(5) other NAIC handbooks, manuals, and instructions, adopted by the department; and

(6) Generally Accepted Accounting Practices.

(b) The Commissioner adopts by reference the March 2007 version of the Manual, with the exceptions and additions set forth in subsections (c) and (d) of this section, as the source of accounting principles for the department when examining financial reports and for conducting statutory examinations and rehabilitations of insurers and health maintenance organizations licensed in Texas, except where otherwise provided by law. This adoption by reference shall be applied to examinations conducted as of January 1, 2008 [~~2007~~] and thereafter, and also shall be used to prepare all financial statements filed with the department for periods after January 1, 2008 [~~2007~~].

(c) The Commissioner adopts the following exceptions and additions to the Manual:

(1) In addition to the statements of statutory accounting principles in the Manual, Statement of Statutory Accounting Principles (SSAP) No. 97 regarding accounting for investments in subsidiary, controlled and affiliated entities, adopted by the NAIC on December 2, 2007 and effective January 1, 2008, are adopted by reference and shall be used to prepare all financial statements filed with the department for periods after January 1, 2008. This adoption of SSAP No. 97 effectively replaces SSAP No. 88.

(2) Nonsubstantive modifications to SSAP Nos. 1, 10, 22, 26, 55, 56, 61, 62, 72, and 80 made by the NAIC in calendar year 2007, as follows:

(A) Ref. No. 2006-09: Accounting for the Gain or Loss on Sale of Real Estate Included in a Leaseback Transition;

(B) Ref. No. 2007-16: Clarification of SSAP No. 26 for Reporting Investments in Commercial Paper;

(C) Ref. No. 2007-17: Disclosure of Information about Capital Structure;

(D) Ref. No. 2005-15: Move INT 03-17 Disclosure to SSAP No. 55;

(E) Ref. No. 2006-11: Multi-Cendant Reinsurance Agreements;

(F) Ref. 2006-24: SSAP No. 61 Ceding Commissions;

(G) Ref. No. 2006-27: Clarify SSAP No. 56, paragraph 20;

(H) Ref. No. 2006-28: Consider Inclusion of Model Regulation 815 into Appendix A - Excerpts of Model Laws;

(I) Ref. No. 2006-31: Disclosure Amendment to SSAP No. 10 for Protective Tax Deposits;

(J) Ref. No. 2007-06: Quarterly Disclosure of Note 25;

(K) Ref. No. 2007-07: Additional Dividend Disclosure;

(L) Ref. No. 2007-13: Subsequent Events;

(M) Ref. No. 2007-15: Disclosures; and

(N) Ref. No. 2007-33: Subprime Mortgage Disclosure.

(3) [~~(1)~~] Settlement requirements for intercompany transactions are subject to the accounting treatment in Statement of Statutory Accounting Principles (SSAP) No. 96, except that amounts owed to the reporting entity shall be settled by the due date in accordance with the written agreement and the requirements of §7.204 of this title (relating to Commissioner's Approval Required). Intercompany balances shall be settled within [~~not exceed~~] 90 days of the period for which the services are being billed; otherwise such balances shall be nonadmitted.

(4) [~~(2)~~] Retrospective premiums must be billed within 60 days of computation and audit premiums must be billed within 60 days of the completion of the audit in determining the beginning date from which the 90 day period is calculated to determine admissibility of uncollected premium balances under SSAP No. 6.

(5) [~~(3)~~] Electronic machines, constituting a data processing system or systems and operating systems software used in connection with the business of an insurance company acquired after December 31, 2000, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law and shall be amortized as provided by the Manual. All such property acquired prior to January 1, 2001, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law, and shall be amortized in full over a period not to exceed ten years.

(6) [~~(4)~~] Furniture, labor-saving devices, machines, and all other office equipment may be admitted as an asset as permitted by the Insurance Code §§841.004, 861.255, 862.001, and any other applicable law and, for such property acquired after December 31, 2000, depreciated in full over a period not to exceed five years. All such property acquired prior to January 1, 2001, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law, and shall be depreciated in full over a period not to exceed ten years.

~~[(5) Goodwill, as reported on a regulated entity's statutory financial statements as of December 31, 2000, and any additional goodwill acquired thereafter, beginning January 1, 2001, shall be admitted as an asset and accounted for as permitted by SSAP Nos. 61 and 68. All other amounts of goodwill, including, but not limited to, such amounts that may have been previously expensed, shall not be allowed as an admitted asset. However, notwithstanding the provisions of SSAP Nos. 61 and 68, all methods of non-insurer subsidiary and affiliate valuation permitted by Insurance Code §§823.301 - 823.307 may be used for the purposes of goodwill calculation.]~~

(7) [~~(6)~~] All certificates of deposit, of any maturity, may be classified as cash and are subject to the accounting treatment contained in SSAP No. 2, notwithstanding the provisions of SSAP No. 26.

(d) A farm mutual insurance company, statewide mutual assessment company, local mutual aid association, or mutual burial association that has less than $6 [~~$5~~] million in annual direct written premiums need not comply with the Manual.

(e) In the event a domestic insurer desires to deviate from the accounting guidance in a Texas statute or any applicable regulation, the insurer shall file a written request for a permitted accounting practice. Such filing shall be made with the Senior Associate Commissioner, Texas Department of Insurance, Mail Code 305-2A, P.O. Box 149104, Austin, Texas 78714-9104 at least 30 days before filing the financial statement affected by the deviated accounting practice. Insurers shall not use deviated accounting practice without the department's prior approval.

(f) This section shall not be construed to either broaden or restrict the authority provided under the Insurance Code to insurers, including health maintenance organizations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 14, 2008.

TRD-200800156
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: February 24, 2008
For further information, please call: (512) 463-6327

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER GG. INSURANCE TAX

34 TAC §3.834

The Comptroller of Public Accounts proposes an amendment to §3.834, concerning volunteer fire department assistance fund assessment pursuant to the Insurance Code, Chapter 2007. Subsection (a) is being amended to clarify the calculation of the assessment, clarify the final assessment date, and delete the definition of assessment date. Subsection (b) now sets out the formula for the calculation of the assessment. Subsection (e) is amended to stipulate that insurers may recoup the assessment from policy holders. Subsections (d), (f), and (g) are amended to correct statue citations due to the recodification of the Insurance Code. The remaining subsections are being relettered accordingly.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will

be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by implementing and clarifying current practice and existing law into these rules. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under Tax Code, §111.002 and §111.0022, which provide 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, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Texas Insurance Code, Chapter 2007.

§3.834. Volunteer Fire Department Assistance Fund Assessment.

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

[(1) Assessment date--The date on which the Texas Department of Insurance (TDI) provides the comptroller with the database of authorized insurers.]

(1) [(2)] Insurer--An insurance entity that is authorized to engage in business in this state, including a stock company, mutual, farm mutual, county mutual, Lloyd's plan, or reciprocal or interinsurance exchange, as of the assessment date.

(2) [(3)] Net direct premium--The gross direct premium written by an insurer, as reported to TDI on the insurer's Annual Statement State Page for:

(A) policies of:

(i) homeowner's insurance;

(ii) fire insurance;

(iii) farm and ranch owner's insurance;

(iv) private passenger automobile physical damage insurance; and

(v) commercial automobile physical damage insurance; and

(B) the nonliability portion of a commercial multiple peril policy.

(3) [(4)] Twelve-month period--The time period from January 1 through December 31, which is the same as the tax year and annual statement period.

(b) Calculation of the assessment. The comptroller will use the following formula, based on premium data provided by the Texas Department of Insurance compiled from the NAIC Annual Statements filed by insurers, to calculate the amount of each insurer's assessment: Figure: 34 TAC §3.834(b)

(c) Billing date and due date.

(1) The comptroller will bill the assessment on or before May 31.

(2) Payment of the assessment is due by August 1.

(d) Enforcement provisions. Tax Code, Title 2, Subtitles A and B, apply to the comptroller's administration, collection, and enforcement of the assessment under Insurance Code, Chapter 2007 [Article 5.102].

[(e) Disallowance of assessment as a credit. Insurance Code, Article 5.102, does not provide for use of the assessment as a credit against premium or maintenance tax.]

(e) [(f)] Retaliatory taxes [Disallowance of assessment for retaliatory purposes]. The assessment may not be included on the retaliatory tax worksheet since insurers may recoup the assessment from policy holders.

(f) [(g)] Recoupment of assessment. An insurer may recover an assessment under this section as provided under [the] Insurance Code, Chapter 2007 [Chapter 5, Article 5.102].

(g) [(h)] Assessment final [Final]. The amount that is assessed an insurer under Insurance Code, Chapter 2007 [Article 5.102], is final as of the [assessment] date the billings are generated by the comptroller. The comptroller will not recalculate the amount due under this section to reflect any changes in an insurer's Texas net direct premium. The assessment under Insurance Code, Chapter 2007 [Article 5.102], is not a deficiency determination under Tax Code, §111.008.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 8, 2008.

TRD-200800093
Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: February 24, 2008
For further information, please call: (512) 475-0387

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PART 12. STATE EMPLOYEE CHARITABLE CAMPAIGN

CHAPTER 329. ELIGIBILITY CRITERIA FOR STATEWIDE FEDERATIONS/FUNDS AND AFFILIATED ORGANIZATIONS

34 TAC §329.1, §329.5

The State Policy Committee (SPC) of the Texas State Employee Charitable Campaign (SECC) proposes amendments to §329.1, concerning audit and review requirements and §329.5, concerning re-certification requirements.

The proposed amendment to §329.1(b) provides that, if a reconciliation letter is submitted with the application for participation in the campaign, it shall be signed by the certified public accountant who completed the audit or accountant's review that is also submitted with the application. This provision is added to ensure that the reconciliation of discrepancies between the audit or accountant's review and the Form 990 be performed and presented by an independent reviewer, by the reviewer familiar with

the audit or review, and in accordance with appropriate accounting standards.

The proposed amendment to §329.5 more accurately specifies the information from the Form 990 that must be submitted when an organization is applying to participate using the re-certification procedure, wherein less material is generally required than that which is required when an organization first applies to participate. Because the first part of the Form 990, which ends with the signature page, may be more than six pages long, the language is being changed to clarify that the SPC requires organizations to submit all pages of the Form 990 that precede and include the signature page.

Kevin Van Oort, Certifying Officer for the SPC, has determined that, for the first five-year period the proposed amendments are in effect, there are no foreseeable fiscal implications for state or local governments as a result of enforcing or administering the amended sections.

Mr. Van Oort also has determined that, for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amended sections will be increased reliability on materials SPC receives, clarification of existing rule, and codification of current practice. There will be no effect on small or micro businesses. There are no anticipated economic costs to persons who are required to comply with the amended sections as proposed.

Comments on the proposal may be submitted to Kevin Van Oort, c/o SECC State Campaign Manager, United Way of Texas, 1122 Colorado, Suite 101, Austin, Texas 78701.

The amendments are proposed under the authority of Texas Government Code, §659.139, which provides that the state employee charitable campaign must be managed fairly and equitably in accordance with the SECC law and the policies and procedures established by the state policy committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees.

The proposed amendments also implement Government Code, §659.140(e)(3), wherein the SPC is directed to determine the eligibility of a federation or fund and its affiliated agencies to participate in the SECC. Basic eligibility requirements are addressed by statute in §659.146, concerning eligibility of charitable organizations in general and eligibility of federations and funds for statewide participation. These amendments incorporate those basic requirements and provide a process to facilitate review of an organization based on those provisions.

§329.1. Audit and Review Requirements.

(a) To be eligible to participate in the state employee charitable campaign, if the charitable organization's budget:

(1) is not more than $100,000, the organization shall provide a completed Internal Revenue Service (IRS) Form 990 and an accountant's review that offers full and open disclosure of the organization's internal operations; or

(2) is greater than $100,000, the organization shall be audited annually in accordance with generally accepted auditing standards of the American Institute of Certified Public Accountants. A copy of the report of such audit shall be provided with the application along with a completed Internal Revenue Service (IRS) Form 990.

(b) When a charitable organization submits an audit or accountant's review, a copy of the organization's most recent annual audit or accountant's review must be included with the application. The audit or accountant's review must cover the fiscal year ending not more than 18 months prior to the January of the campaign year in which the organization is applying for participation. The IRS Form 990 and audit or accountant's review must cover the same fiscal period. If the revenue and expenses on these two documents differ, the reconciliation must be included in the IRS Form 990 itself or be included in a letter of reconciliation signed and submitted by the certified public accountant who completed the audit or accountant's review.

§329.5. Re-certification Requirements.

(a) To be eligible to participate in the State Employee Charitable Campaign and apply via the re-certification process:

(1) the statewide federation/fund and affiliates must have not spent more than 25% of their annual revenue for administrative and fund raising expenses in the prior year's campaign; and

(2) statewide federation/fund and affiliates must have participated in the prior year's State Employee Charitable Campaign.

(b) To participate in the State Employee Charitable Campaign via the re-certification process the statewide federation/fund must submit the following:

(1) letter from the State Policy Committee stating eligibility to apply to the State Employee Charitable Campaign via the re-certification process;

(2) organization information page including 3-year history of administrative expense percentages;

(3) all documentation in compliance with §329.1 of this title (relating to Audit and Review Requirements); and

(4) current operating budget.

(c) To participate in the State Employee Charitable Campaign via the re-certification process, the affiliate charitable organization must submit the following:

(1) letter from the State Policy Committee stating eligibility to apply to the State Employee Charitable Campaign via the re-certification process;

(2) affiliate information page including 3-year history of administrative expense percentages; and

(3) Internal Revenue Service (IRS) Form 990, specifically, all pages [~~the first six pages~~] of the Form 990 preceding[~~, up to~~] and including the signature page, which shall contain the signature and attestation of the individual preparing the form. The form must be less than 18 months old.

(d) To participate in the State Employee Charitable Campaign via the re-certification process the affiliate charitable organization must submit a complete application to the statewide federation/fund.

(e) A complete application with all documentation shall be maintained by the statewide federation/fund for 3 years from the date of application. The SPC may conduct a random audit of any and all documentation prior to approval of the federation/fund or affiliate for any year's State Employee Charitable campaign.

(f) Every third year, the statewide federation/fund must submit a complete application for the federation/fund and affiliates.

(g) Each re-certification application is subject to review by the current State Policy Committee, is subject to the current rules, and can be denied for any of the reasons that a full application can be denied.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2008.

TRD-200800121
Kevin Van Oort
Certifying Officer, State Policy Committee
State Employee Charitable Campaign
Earliest possible date of adoption: February 24, 2008
For further information, please call: (512) 475-0387

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CHAPTER 330. ELIGIBILITY CRITERIA FOR LOCAL FEDERATIONS/FUNDS, AFFILIATED ORGANIZATIONS, AND LOCAL CHARITABLE ORGANIZATIONS

34 TAC §330.1, §330.7

The State Policy Committee (SPC) of the Texas State Employee Charitable Campaign (SECC) proposes amendments to §330.1, concerning audit and review requirements and §330.7, concerning re-certification requirements.

The proposed amendment to §330.1(b) provides that, if a reconciliation letter is submitted with the application for participation in the campaign, it shall be signed by the certified public accountant who completed the audit or accountant's review that is also submitted with the application. This provision is added to ensure that the reconciliation of discrepancies between the audit or accountant's review and the Form 990 be performed and presented by an independent reviewer and in accordance with appropriate accounting standards.

The proposed amendment to §330.7 more accurately specifies the information from the Form 990 that must be submitted when an organization is applying to participate using the re-certification procedure, wherein less material is generally required than that which is required when an organization first applies to participate. Because the first part of the Form 990, which ends with the signature page, may be more than six pages long, the language is being changed to clarify that the SPC requires organizations to submit all pages of the Form 990 that precede and include the signature page.

Kevin Van Oort, Certifying Officer for the SPC, has determined that, for the first five-year period the proposed amendments are in effect, there are no foreseeable fiscal implications for state or local governments as a result of enforcing or administering the amended sections.

Mr. Van Oort also has determined that, for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amended sections will be increased reliability on materials SPC receives, clarification of existing rule, and codification of current practice. There will be no effect on small or micro businesses. There are no anticipated economic costs to persons who are required to comply with the amended sections as proposed.

Comments on the proposal may be submitted to Kevin Van Oort, c/o SECC State Campaign Manager, United Way of Texas, 1122 Colorado, Suite 101, Austin, Texas 78701.

The amendments are proposed under the authority of Texas Government Code, §659.139, which provides that the state employee charitable campaign must be managed fairly and equitably in accordance with the SECC law and the policies and procedures established by the SPC. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees.

The proposed amendments also implement Government Code, §659.143(e)(2), wherein the Local Employee Committee is directed to determine the eligibility of local charitable organizations to participate in the SECC. Basic eligibility requirements are addressed by statute in §659.146, concerning eligibility of charitable organizations in general. These amendments incorporate those basic requirements and provide a process to facilitate review of an organization based on those provisions.

§330.1. Audit and Review Requirements.

(a) To be eligible to participate in the state employee charitable campaign, if the charitable organization's budget:

(1) is not more than $100,000, the organization shall provide a completed Internal Revenue Service (IRS) Form 990 and an accountant's review that offers full and open disclosure of the organization's internal operations; or

(2) is greater than $100,000, the organization shall be audited annually in accordance with generally accepted auditing standards of the American Institute of Certified Public Accountants. A copy of the report of such audit shall be provided with the application along with a completed Internal Revenue Service (IRS) Form 990.

(b) When a charitable organization submits an audit or accountant's review, a copy of the organization's most recent annual audit or accountant's review must be included with the application. The audit or accountant's review must cover the fiscal year ending not more than 18 months prior to the January of the campaign year in which the organization is applying for participation. The IRS Form 990 and audit or accountant's review must cover the same fiscal period. If the revenue and expenses on these two documents differ, the reconciliation must be included in the IRS Form 990 itself or be included in a letter of reconciliation signed and submitted by the certified public accountant who completed the audit or accountant's review.

§330.7. Re-certification Requirements.

(a) To be eligible to participate in the State Employee Charitable Campaign and apply via the recertification process:

(1) the local federation/fund and affiliates must have participated in the previous year's campaign; and

(2) the local federation/fund and affiliates must have not spent more than 25% of its annual revenue for administrative and fund raising expenses in the prior year's campaign;

(b) To participate in the State Employee Charitable Campaign via the re-certification process the local federation/fund must submit the following:

(1) letter from the State Policy Committee stating eligibility to apply to the state employee charitable campaign via the re-certification process;

(2) organization information page including 3-year history of administrative expense percentages;

(3) all documentation in compliance with §330.1 of this title (relating to Audit and Review Requirements); and

(4) current operating budget.

(c) To participate in the State Employee Charitable Campaign via the re-certification process, the affiliate charitable organization must submit the following:

(1) letter from the State Policy Committee stating eligibility to apply to the state employee charitable campaign via the re-certification process;

(2) affiliate information page including 3-year history of administrative expense percentages; and

(3) Internal Revenue Service (IRS) Form 990, specifically, all [~~the first six~~] pages of the Form 990 preceding[~~, up to~~] and including the signature pages, which shall contain the signature and attestation of the individual preparing the form. The form must be less than 18 months old.

(d) To participate in the State Employee Charitable Campaign via the re-certification process the affiliate charitable organization must submit a full application to the local federation/fund.

(e) A complete application with all documentation shall be maintained by the local federation/fund for 3 years after the date of application. The LEC or the SPC may conduct a random audit of any and all documentation prior to approval of the federation/fund or affiliate for any year's state employee charitable campaign.

(f) Every third-year, the local federation/fund will be required to submit a complete application for the federation/fund and affiliates.

(g) A local unaffiliated charitable organization is not eligible to apply to the State Employee Charitable Campaign via the re-certification process at any time. A full application with all required documentation must be submitted each year.

(h) Each re-certification application is subject to review by the current State Policy Committee or Local Employee Committee, is subject to the current rules, and can be denied for any of the reasons that a full application can be denied.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2008.

TRD-200800122
Kevin Van Oort
Certifying Officer, State Policy Committee
State Employee Charitable Campaign
Earliest possible date of adoption: February 24, 2008
For further information, please call: (512) 475-0387

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CHAPTER 331. REVIEW AND APPEAL PROCEDURES FOR STATEWIDE FEDERATIONS/FUNDS AND AFFILIATED ORGANIZATIONS

34 TAC §331.5

The State Policy Committee (SPC) of the Texas State Employee Charitable Campaign (SECC) proposes amendments to §331.5, concerning appeal process.

The amendment to §331.5 changes the deadline for organizations to submit appeals to the SPC from a date tied to the date of a future SPC meeting to a date specific to be determined by the State Campaign Manager (SCM) on an annual basis. The change allows for organizations to more easily determine the specific date for submitting appeals without having to first determine the date of the next scheduled SPC meeting, and it helps ensure that the SCM will not create a deadline that inadvertently conflicts with the rule. Historically, the SCM has informed applicants of the date by which appeals are due in the letter notifying of the rejection of the application. This has afforded applicants the greatest and most accurate notice concerning the date that appeals are due. This rule would not change that historical and current practice but is instead predicated on that practice, namely, that the SCM will notify the applicants of the date by which appeals must be submitted.

Kevin Van Oort, Certifying Officer for the SPC, has determined that for the first five-year period the sections are in effect there are not foreseeable fiscal implications for state or local governments as a result of enforcing or administering the sections.

Mr. Van Oort also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the sections will be codification of current practice, minimization of the possibility of confusion regarding the applicable due dates, and greater assurance that SCM practices do not inadvertently conflict with the rules of the SPC. There will be no effect on small or micro businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Kevin Van Oort, c/o SECC State Campaign Manager, United Way of Texas, 1122 Colorado, Suite 101, Austin, Texas 78701.

The amendments are proposed under the authority of Texas Government Code, §659.139, which provides that the state employee charitable campaign must be managed fairly and equitably in accordance with the SECC law and the policies and procedures established by the state policy committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees.

The amendment also implements Government Code, §659.146(e), which authorizes the SPC to prescribe the manner by which appeals from SPC decisions on statewide applications shall be conducted.

§331.5. Appeal Process.

No statewide federation or affiliate whose application was not complete will be considered for appeal by the State Employee Charitable Campaign Policy Committee (SPC). All appeals must be in writing and must be received in the state campaign manager's office prior to the deadline set by the SCM [~~at least 10 business days prior to the SPC meeting scheduled to consider appeals~~]. Appeals shall include the complete application originally submitted to the SPC and the letter of denial from the SPC. Faxed appeals will not be accepted.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2008.

TRD-200800123
Kevin Van Oort
Certifying Officer, State Policy Committee
State Employee Charitable Campaign
Earliest possible date of adoption: February 24, 2008
For further information, please call: (512) 475-0387

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CHAPTER 332. REVIEW AND APPEAL PROCEDURES FOR LOCAL FEDERATIONS/FUNDS, AFFILIATED ORGANIZATIONS, AND LOCAL CHARITABLE ORGANIZATIONS

34 TAC §332.1, §332.5

The State Policy Committee (SPC) of the Texas State Employee Charitable Campaign (SECC) proposes amendments to §332.1, concerning administrative review and §332.5, concerning appeal process.

The amendment to §332.1 instructs the LCM on the handling of applications that are not eligible for LEC review as a result of the application being incomplete or missing required documentation. Under the amended rule, the LCM would be required to submit a report to the LEC of the applications that will not be submitted for LEC review for the reasons stated above. This step is added so that the LEC is aware of applications that are being received by the SECC but that are not being reviewed. In the event an LEC member were to be contacted regarding one of these applications, the LEC member would have the benefit of first having been made aware of the situation by the LCM report.

The amendment to §332.5 changes the deadline for organizations to submit appeals to the SPC from a date tied to the date of a future SPC meeting to a date specific to be determined by the State Campaign Manager (SCM). The change allows for organizations to determine the specific date for submitting appeals more easily without having to first determine the date of the next scheduled SPC meeting, and it helps ensure that the SCM will not create a deadline that inadvertently conflicts with the rule. Historically, the LCM has informed applicants of the date by which appeals are due to the SPC in the letter rejecting the application. This has afforded applicants the greatest and most accurate notice concerning the date that appeals are due. This rule would not change that historical and current practice but is instead predicated on that practice, namely, that the SCM will notify the LCM and that the LCM will notify the applicants of the date by which appeals must be submitted.

Kevin Van Oort, Certifying Officer for the SPC, has determined that for the first five-year period the sections are in effect there are not foreseeable fiscal implications for state or local governments as a result of enforcing or administering the sections.

Mr. Van Oort also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the sections will be codification of current practice, minimization of the possibility of confusion regarding the applicable due dates, and greater assurance that LCM and SCM practices do not inadvertently conflict with the rules of the SPC. There will be no effect on small or micro businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Kevin Van Oort, c/o SECC State Campaign Manager, United Way of Texas, 1122 Colorado, Suite 101, Austin, Texas 78701.

The amendments are proposed under the authority of Texas Government Code, §659.139, which provides that the state employee charitable campaign must be managed fairly and equitably in accordance with the SECC law and the policies and procedures established by the state policy committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees.

The amendment to §332.1 implements Government Code, §659.144(c)(2), which directs the LCM to manage the local state employee charitable campaign in the campaign area.

The amendment to §332.5 implements Government Code, §659.147(d) which authorizes the SPC to prescribe the manner by which appeals from LEC decisions on local applications shall be conducted.

§332.1. Administrative Review.
The Local Employee Committee shall perform an administrative review of local applications and give local federations and organizations time to provide missing documentation prior to the Local Employee Committee eligibility review process. This is an administrative review only to determine the submission of all documentation. This review will make no determinations regarding eligibility. Local federations and organizations with missing documentation will be allowed time to provide needed documents. Only complete applications with all required documentation will be submitted to the Local Employee Committee for eligibility approval. Deadlines will be enforced. The LCM shall prepare a report of all applications that were not submitted to the LEC for approval because of incomplete application or missing documentation. The report shall be provided to the LEC prior to the meeting during which other applications will be considered for approval.

§332.5. Appeal Process.
All appeals from a Local Employee Committee regarding eligibility shall be made to the State Employee Charitable Campaign Policy Committee (SPC). No local federation, affiliate or local organization whose application [~~applications~~] was denied by the Local Employee Committee for incomplete documentation will be considered for appeal by the SPC. All appeals must be in writing and must be received in the state campaign manager's office prior to the deadline set by the SCM [~~at least 10 business days prior to the SPC meeting scheduled to consider appeals~~]. Appeals shall include the complete application originally submitted to the Local Employee Committee and the letter of denial from the Local Employee Committee. Faxed appeals will not be accepted.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2008.

TRD-200800124

Kevin Van Oort
Certifying Officer, State Policy Committee
State Employee Charitable Campaign
Earliest possible date of adoption: February 24, 2008
For further information, please call: (512) 475-0387

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 3. STATE PUBLICATIONS DEPOSITORY PROGRAM

13 TAC §3.4

The Texas State Library and Archives Commission withdraws the proposed amendments to §3.4 which appeared in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8642).

Filed with the Office of the Secretary of State on January 11, 2008.

TRD-200800135
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: January 11, 2008
For further information, please call: (512) 463-5459

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 352. QUALITY ASSURANCE FEE

1 TAC §§352.1 - 352.9

The Texas Health and Human Services Commission (HHSC) adopts amendments to §§352.1 - 352.9, concerning the quality assurance fee for the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) program, without changes to the proposed text as published in the November 2, 2007, issue of the *Texas Register* (32 TexReg 7789) and will not be republished.

The amendments update the ICF/MR quality assurance fee rules by revising the quality assurance fee percentage to reflect the maximum 5.5 percent fee allowed under the federal Tax Relief and Health Care Act of 2006 (TRHCA), P.L. 109-432, Section 403, which amended Section 1903(w)(4)(C) of the Social Security Act (42 U.S.C. 1396b(w)(4)(C)). This law took effect on January 1, 2008. The 5.5 percent maximum allowed for ICF/MR facilities in the TRHCA represents a 0.5 percent reduction in matchable ICF/MR quality assurance fees. The effect of this law is that contracted ICF/MR providers will pay less in quality assurance fees to the state than they currently pay. In addition, the amendments update administrative procedures relating to the quality assurance fee, remove outdated language, and update references to reflect that the Department of Aging and Disability Services (DADS) has administrative responsibility for the quality assurance fee.

The purpose of the amendments are to revise the ICF/MR quality assurance fee rules to reflect the new maximum quality assurance fee allowed under the TRHCA and to provide clear guidance to agency staff and providers on quality assurance fee reporting requirements and calculations, monitoring and auditing responsibilities, penalties, informal review and formal appeal rights and responsibilities. As part of updating administrative procedures, the amendments clarify how penalties for non-payment of the fee will be calculated and require DADS to collect underpayments and refund overpayments of fees. In addition, the deadlines regarding the submittal of required reports are changed or clarified, and the definition of "gross receipts" is clarified to mean "accrued payments" and not "cash received." Finally, language is added to allow DADS to reconcile overpayments and underpayments of the fee to 5.5 percent of annual gross receipts at the corporate entity level for those entities that control more than one facility.

The 30-day comment period ended December 2, 2007, and HHSC did not receive any comments on the proposed amendments.

The amendments are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resource 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2008.

TRD-200800150
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: February 3, 2008
Proposal publication date: November 2, 2007
For further information, please call: (512) 424-6900

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CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.503, concerning Reimbursement Methodology for the Community-Based Alternatives (CBA) Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs; §355.505, concerning Reimbursement Methodology for the Community Living Assistance and Support Services (CLASS) Waiver Program; and §355.5902, concerning Reimbursement Methodology for Primary Home Care (PHC), without changes to the proposed text as published in the November 9, 2007, issue of the *Texas Register* (32 TexReg 8073) and will not be republished.

One amendment to §355.503(d)(2) adds subparagraph (D), which sets out a reimbursement methodology for Personal Care III that: (1) models the direct care portion of the payment rate using program staffing requirements; and (2) ties the non-direct care portion of the rate to the non-attendant portion of the non-apartment assisted living rate for a provider that does not participate in receiving rate add-ons in the Attendant Compensation Rate Enhancement.

A second amendment to §355.503 adds subsection (f)(3); the amendment to §355.505 amends subsection (c)(2); and the amendment to §355.5902 amends subsection (b)(1). These

amendments will allow legal entities to submit a single cost report, by program, per legal entity for all of their contracts participating in the Attendant Compensation Rate Enhancement and a single cost report, by program, per legal entity for all of their contracts not participating in the Attendant Compensation Rate Enhancement.

The purpose of the amendments is to adopt a reimbursement methodology for CBA PC III and to reduce the administrative effort required of providers and HHSC to complete, process, audit, and analyze cost reports.

The 30-day comment period ended December 9, 2007, and HHSC did not receive any comments on the proposed amendments.

SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.503, §355.505

The amendments are adopted under the Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code §32.021 and the Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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SUBCHAPTER G. TELEMEDICINE SERVICES AND OTHER COMMUNITY-BASED SERVICES

1 TAC §355.5902

The amendments are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resource 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2008.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: February 3, 2008
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For further information, please call: (512) 424-6900

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 50. 2006 HOUSING TAX CREDIT PROGRAM QUALIFIED ALLOCATION PLAN AND RULES

10 TAC §§50.1 - 50.23

The Texas Department of Housing and Community Affairs adopts the repeal of Chapter 50, §§50.1 - 50.23, concerning the 2006 Housing Tax Credit Program Qualified Allocation Plan and Rules. The repeal is adopted without changes to the proposal as published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 5881) and will not be republished.

The sections are adopted for repeal in order to promulgate new sections conforming to the requirements of laws enacted under the Internal Revenue Code of 1986, §42, as amended, which provides for credits against federal income taxes for owners of qualified low income rental housing and to implement changes enacted during the 80th Regular Session of the Texas Legislature.

Public hearings concerning the repeal were held in El Paso (September 24, 2007), Lubbock (September 28, 2007), Brownsville (October 3, 2007), Houston (September 26, 2007), Dallas (October 1, 2007), and Austin (October 4, 2007). Additionally, written comments on the repeal of the rule were accepted by mail, e-mail, and facsimile through October 10, 2007.

No comments were received regarding this adopted repeal.

The repeal is adopted pursuant to the authority of the Texas Government Code, Chapter 2306 and the Internal Revenue Code of 1986, §42, as amended, which provide the Department with the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2008.

TRD-200800148
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 3, 2008
Proposal publication date: September 7, 2007
For further information, please call: (512) 475-3916

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CHAPTER 50. 2008 HOUSING TAX CREDIT PROGRAM QUALIFIED ALLOCATION PLAN AND RULES

10 TAC §§50.1 - 50.23

The Texas Department of Housing and Community Affairs (the Department) adopts new Chapter 50, §§50.1 - 50.23, concerning the 2008 Housing Tax Credit Program Qualified Allocation Plan and Rules ("QAP"). Sections 50.1 - 50.23 are adopted with changes to the proposed text as published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 5882).

The new sections are necessary to implement changes made by the 80th Legislature providing procedures for and limits on the allocation by the Department of certain housing tax credits available under federal income tax laws to owners of qualified rental housing developments.

Public hearings on the new rule were held in El Paso (September 24, 2007), Lubbock (September 28, 2007), Brownsville (October 3, 2007), Houston (September 26, 2007), Dallas (October 1, 2007), and Austin (October 4, 2007). Additionally, written comments on the new rule were accepted by mail, e-mail, and facsimile through October 10, 2007.

The adoption of the rule is subject to a statutory requirement that the Governor "approve, reject, or modify and approve the QAP not later than December 1" as provided in Texas Government Code §2306.6724(c). The Governor approved the QAP on December 1, 2007.

REASONED RESPONSE TO PUBLIC COMMENT ON THE 2008 DRAFT QUALIFIED ALLOCATION PLAN AND RULES

The Texas Department of Housing and Community Affairs (the "Department") received the majority of comments to the 2008 Draft Qualified Allocation Plan and Rules (QAP) in writing by email, fax and mail. The comments and responses include both administrative clarifications and corrections made to the QAP by staff, as well as substantive comments on the QAP and the corresponding Departmental response. Comments and responses are presented in the order they appear in the QAP. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment. Copies of the exact comment letters provided are available on the Department's website.

Public comments on the new rule were received by (1) Alamo Housing Authority; (2) Hettig/Kahn Holdings, Inc; (3) - (4) Catellus Development Group; (5) Charter Builders; (6) CHS; (7) Churchill Residential, Inc.; (8) City of Brownsville Planning Department; (10) City of El Paso, Department of Community Development; (11) City of Fort Worth, Housing Program Manager; (12) - (13) Coats/Rose; (14) Community Partnership for the Homeless; (15) The Youngs Company; (16) Doublekaye Corp.; (17) El Paso Coalition for the Homeless; (18) Flores Residential, LC; (19) Foundation Communities; (20) Lancaster Pollard; (21) Greater Greenspoint District; (22) H.A.V.E. Association; (23) Housing Authority of the City of Kingsville; (24) Housing Authority of the City of Pharr; (25) Housing Authority of the City of Texarkana; (26) - (27) Individuals; (28) Harris County MUD 71; (29) Katy Area Economic Development Council; (30) Katy Independent School District, Superintendent; (31) La Joya Housing Authority; (32) Locke Lord Bissell & Liddell LLP; (33) Mark-Dana Corporation; (34) Martin Riley Associates - Architects, P.C.; (35) McAllen Housing Authority; (36) NRP Group; (37) Realtex Development Corporation; (38) Representative Bill Callegari; (39) Representative Eddie Rodriguez; (40) Rural Rental Housing Association of Texas ("RRHA"); (41) San Antonio Housing Authority; (42) S. Anderson Consulting; (43) Shackelford Melton & McKinley; (44) Texas Affiliation of Affordable Housing Providers ("TAAHP"); (45) Texas Legal Services Center ("TLSC"); (46) Texas National Association of Housing and Redevelopment Officials ("Texas NAHRO"); (47) Tropicana Building Corporation; (48) United States Department of Agriculture Rural Development; (49) Individual; and, (50) Texas Association of Community Development Corporations.

The Texas Department of Housing and Community Affairs (the "Department") received the majority of comments to the 2008 Draft Qualified Allocation Plan and Rules (QAP) in writing by email, fax and mail. This document provides the Department's response to all comments received. The comments and responses include both administrative clarifications and corrections made to the QAP by staff, as well as substantive comments on the QAP and the corresponding Departmental response. Comments and responses are presented in the order they appear in the QAP. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected in the Addendum. If comment resulted in recommended language changes to the Draft QAP as presented to the Board in August, those new language changes are highlighted. Copies of the exact comment letters provided are available on the Department's website.

Chapter 50 - GENERAL COMMENTS (3, 11, 14, 19, 21, 27, 28, 29, 30, 37, 44)

ADMINISTRATIVE CHANGES: Staff has made administrative revisions throughout the QAP to correct spelling, punctuation, and spacing errors; to consistently capitalize defined terms; and to consistently utilize defined terms. In cases where administrative changes propose revisions other than those outlined here, the proposed change will be addressed in the applicable QAP section.

COMMENT (44): Comment commended Department staff for its incorporation of previously expressed comments and concerns of the development community into the 2008 Draft QAP.

STAFF RESPONSE: Staff appreciates the commendation relating to Department efforts to address the comments and concerns of the development community. No change to the QAP is applicable.

BOARD RESPONSE: Accepted staff's recommendation.

COMMENT (29, 30, 28): Comments suggested that the Housing Tax Credit ("HTC") program be modified to provide for compensation to school districts to offset the cost to accommodate new students who enroll as a result of the development of new HTC developments, and the loss of tax revenue as a result of lower property valuations for HTC developments. Additional comment suggested mixed-use developments as a way to compensate the school districts and Municipal Utility Districts ("MUD") for the loss of tax revenue from HTC developments, and to provide increased quality of life to residents.

STAFF RESPONSE: The tax credit program is not federally structured in a way that provides compensation for school districts or other government entities that believe they are being fiscally impacted by the siting of tax credit properties. School

districts are tasked with educating all children, regardless of their residence or income, and indicating that "compensation" is necessary to educate the children of tax credit property tenants is not consistent with that mission. No change is recommended.

BOARD RESPONSE: Accepted staff's recommendation.

COMMENT (28): Comment suggested that strong sanctions should be applied to developers that misrepresent themselves or their development plan to members of the public and to the Department. The commenter cited a 2007 application as an example.

STAFF RESPONSE: The current rules do apply sanctions to developer misrepresentations and staff continues to work with the Board on generating policies that strongly discourage and penalize misrepresentations. To the extent necessary further research is being conducted into the specific allegation noted. No change is recommended.

BOARD RESPONSE: Accepted staff's recommendation.

COMMENT (28): Comment suggested that the application process be streamlined so that documents and submissions are not missed by Department staff in the review process.

STAFF RESPONSE: The Multifamily Division handles large volumes of documents and submissions and has altered the program each year to balance the development process with an application process. While those alterations have reduced the submissions necessary, there still remain a variety of deadlines for varying documents. The Division is continuing to make process improvements to its handling of documents to reduce the risk of missing any submissions. No change is recommended.

BOARD RESPONSE: Accepted staff's recommendation.

COMMENT (11): Comment was received that asserted that the majority of the proposed changes in the 2008 QAP are detrimental to the production of affordable housing and to low-income citizens of the City of Fort Worth. Comment asserted that the City of Fort Worth opposes any changes to the QAP from 2007.

STAFF RESPONSE: Specific comments from this commenter have been summarized and responded to in the applicable QAP sections. While staff appreciates the feedback regarding the effect of proposed changes on the City of Fort Worth, the Department is charged with creating rules that address the affordable housing needs of the entire state. No change is recommended.

BOARD RESPONSE: Accepted staff's recommendation.

COMMENT (19): Comment encouraged the Department to continue to invest in supportive services. Additionally, comment supported the Department's efforts to develop quality housing for households at 30% of AMGI, and commented that the Department has helped develop enough housing at the 60% of AMGI level to meet the need in many parts of Texas. Comment also supported the Department's incorporation of green building practices.

STAFF RESPONSE: The Department currently requires the provision of supportive services in Tax-Exempt Bond Developments and offers incentives for the provision of supportive services in Competitive Housing Tax Credit developments. Staff appreciates the feedback regarding the continuation of the effort to bring supportive services to the residents of affordable housing. No change is recommended.

The Department seeks to provide incentives to serve persons at various levels of AMGI throughout the state, and to diversify the income levels of those being served to minimize saturation at any particular income level. Further discussion of staff's efforts to provide these incentives may be found in the response to comment regarding §50.9(i)(3), Income Levels of Tenants. No change is recommended.

Staff appreciates the commendations regarding the incorporation of green building practices. Staff understands the need to have energy efficiencies and green building incorporated in developments. Staff will continue to research green building initiatives and have appropriate recommendations for the 2009 QAP.

BOARD RESPONSE: Accepted staff's recommendation.

COMMENT (21): Comment suggested that more aggressive incentives should be considered by the Department for developments that apply for rehabilitation funding to encourage revitalization within the areas most eligible for Department funding. Additionally, comment suggested that greater emphasis should be placed on placing qualifying low-income persons in existing housing tax credit developments, and in market rate developments where rental rates are comparable to those of existing tax credit developments in the area.

STAFF RESPONSE: The Department currently offers several incentives for the use of existing housing in the development of affordable housing. It is not the role of the Department to direct qualifying low-income persons to live in certain developments; low-income persons are, and should be, able to choose to live in housing that most closely meets their unique needs. No change is recommended.

BOARD RESPONSE: Accepted staff's recommendation.

COMMENT (27, 3, 14, 37): Comment provided general support for the Mueller Airport redevelopment in Austin and encouraged the Department to adopt rule changes that allow for the success of the tax credit portion of the redevelopment, so that other housing of this kind can be replicated in the future. Other comment provided support for mixed-income developments throughout the state, as a way to deconcentrate affordable housing. Comment also provided support for urban infill developments.

STAFF RESPONSE: To the extent that specific rule changes are proposed relating to the Mueller redevelopment and other developments of its type, they are addressed in each specific QAP section. No change is recommended.

BOARD RESPONSE: Accepted staff's recommendation.

§50.3(1) - Definitions - Adaptive Reuse

COMMENT (4, 33, 34, 36, 39, 40, 44, 42, 13): Comment was received indicating that the category "adaptive reuse" under the Rehabilitation definition should be defined separately from the Rehabilitation definition. Commenters suggested the addition of the following definition of adaptive reuse: "The reconstruction or rehabilitation of an existing nonresidential development (e.g., a school, warehouse, hospital, etc.) into a residential development". Other comment suggested the same language, but instead of the reconstruction or rehabilitation of an existing nonresidential development, "nonresidential structure" should instead be used. The commenter stated that the reuse of land without a structure should not be called adaptive reuse. The commenter also requested clarification as to whether the original building may increase in size. Another commenter suggested that adaptive reuse be defined as "The transformation of an existing nonresidential development (e.g. school, warehouse, airport) into a residential development". Comment suggested that an airport

runway is something that could be considered a structure because of the significant demolition, cleanup, and infrastructure costs associated with making the non-residential runway into a residential development.

STAFF RESPONSE: Staff agrees the QAP should include a definition for adaptive reuse. Staff suggests that any units built outside the original building footprint, will be considered new construction. Staff proposes the following language:

(1) Adaptive Reuse--The renovation or rehabilitation of an existing non-residential building or structure (e.g., school, warehouse, office, hospital, etc....), including physical alterations that modify the building's previous or original intended use. If any Units are built outside the original building footprint, the Development will be considered New Construction.

BOARD RESPONSE: Accepted staff's recommendation.

§50.3(14) Definitions - At-Risk Development

COMMENT (1, 6, 14, 18, 22, 23, 24, 25, 31, 35, 41, 46): Significant comment was received that suggested that the definition of an At-Risk Development should be revised to include §9 of the National Housing Act. Comment asserted that these properties are at risk of losing their affordability due to continuing reductions in federal funds, and a current capital needs backlog for public housing properties. Comment also suggested that the definition of At-Risk Development be revised to include Section 8 certificates and/or vouchers administered by local Housing Authorities. Other comment suggested that projects developed pursuant to the U.S. Housing Act of 1937, 42 U.S.C.A. §1437 should be eligible under the At-Risk Set-Aside. Additional comment suggested that Section 8 Moderate Rehabilitation Single Room Occupancy Program be added to the definition of At-Risk Development. Comment asserted that sustaining developments financed under this program is crucial to ending long-term homelessness.

STAFF RESPONSE: The sources of funding that qualify under the At-Risk set-aside are established in statute §2306.6702. The Department is unable to make additions to that statutory definition. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.3(30) - Definitions - Determination Notice

ADMINISTRATIVE CHANGE: Staff proposes the following administrative revision to clarify the period during which the Development will remain rent restricted:

(30) Determination Notice--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which states that the Development may be eligible to claim Housing Tax Credits without receiving an allocation of Housing Tax Credits from the State Housing Credit Ceiling because it satisfies the requirements of this QAP; sets forth conditions which must be met by the Development before the Department will issue the IRS Form(s) 8609 to the Development Owner; and specifies the Department's determination as to the amount of tax credits necessary for the financial feasibility of the Development and its viability as a rent restricted Development throughout the extended use period. (§42(m)(1)(D)).

BOARD RESPONSE: Accepted staff's recommendation.

§50.3(32) - Definitions - Development

ADMINISTRATIVE CHANGE: Staff proposes the following administrative revision to incorporate the new Adaptive Reuse definition, and the deletion of the Reconstruction definition:

(32) Development--A proposed qualified and/or approved low-income housing project, as defined by the Code, §42(g), for Adaptive Reuse, New Construction, reconstruction, or Rehabilitation, that consists of one or more buildings containing multiple Units, and that, if the Development shall consist of multiple buildings, is financed under a common plan and is owned by the same Person for federal tax purposes, and the buildings of which are either:

(A) Located on a single site or contiguous site; or

(B) Located on scattered sites and contain only rent-restricted units. (§2306.6702)

BOARD RESPONSE: Accepted staff's recommendation.

§50.3(35) - Definitions - Development Owner

ADMINISTRATIVE CHANGE: Staff proposes the following administrative revision to clarify the type of Control required for a Development Owner:

(35) Development Owner--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department. (§2306.6702)

BOARD RESPONSE: Accepted staff's recommendation.

§50.3(38) - Definitions - Disaster Areas

COMMENT (32): Comment suggested that the definition of a Disaster Area should contain a reference to applicable state or federal statute to add clarity to areas that qualify.

STAFF RESPONSE: Staff believes there should be clarification and proposes the following:

(38) Disaster Area--An area that has been declared as a disaster pursuant to §418.014 of Texas Government Code.

BOARD RESPONSE: Accepted staff's recommendation.

§50.3(56)(C) - Definitions - Ineligible Building Types

COMMENT (1, 18, 22, 23, 24, 25, 31, 35, 41, 46): Significant comment was received that suggested that Qualified Elderly Developments be allowed to include units with more than two bedrooms if the units with more than two bedrooms are occupied by a property manager or maintenance employee.

STAFF RESPONSE: Staff believes this is a reasonable request and proposes the following:

(C) Any Qualified Elderly Development or age restricted buildings in Intergenerational Housing Developments with any Units having more than two bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance and/or security officer. These employee Units must be specifically designated as such.

BOARD RESPONSE: Accepted staff's recommendation.

§50.3(56)(G) - Definitions - Ineligible Building Types

ADMINISTRATIVE CHANGE: Staff recommends the following revision to clarify the applicability of the definition to Adaptive Reuse:

(G) Any Development located in an Urban Area involving any New Construction or Adaptive Reuse (excluding New Construc-

tion of non-residential buildings) of additional Units (other than a Qualified Elderly Development, a Development composed entirely of single family dwellings, and certain specific types of transitional housing for the homeless and single room occupancy units, as provided in the Code, §42(i)(3)(B)(iii) and (iv)) in which any of the designs in clauses (i) - (iv) of this subparagraph are proposed. For Applications involving a combination of single family detached dwellings and multifamily dwellings, the percentages in this subparagraph do not apply to the single family detached dwellings. For Intergenerational Housing Applications, the percentages in this subparagraph do not apply to buildings that are restricted by the age requirements of a Qualified Elderly Development. An Application may reflect a total of Units for a given bedroom size greater than the percentages in clauses (i) - (iv) of this subparagraph to the extent that the increase is only to reach the next highest number divisible by four.

(i) More than 30% of the total Units are one bedroom Units; or

(ii) More than 55% of the total Units are two bedroom Units; or

(iii) More than 40% of the total Units are three bedroom Units; or

(iv) More than 5% of the total Units in the Development with four or more bedrooms.

(H) Any Development that includes age restricted units that are not consistent with the Intergenerational Housing definition and policy or the definition of a Qualified Elderly Development.

(I) Any Development that contains residential Units either designated for a single occupational group, or through a preference for a single occupational group, violates the general public use requirement under Treasury Regulation §1.42-9.

BOARD RESPONSE: Accepted staff's recommendation.

§50.3(56)(I) - Definitions - Ineligible Building Types

COMMENT (7): Comment suggested that tax credits should be allowed to be used to target specific groups such as single mothers.

STAFF RESPONSE: There is clear federal guidance from the Internal Revenue Service that all tax credit properties must be made available for general public use. The targeting of specific groups or populations is specifically prohibited by the general public use provision in the IRS Code. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.3(63) - Definitions - Neighborhood Organization

COMMENT (1, 18, 22, 23, 24, 25, 31, 35, 41, 46): Significant comment was received from Housing Authorities that suggested that the definition of Neighborhood Organization should be revised to include Resident Councils.

STAFF RESPONSE: The definition for Neighborhood Organization is statutorily defined in §2306.004. The Department is unable to change that definition. However, it should be noted that resident councils may be eligible to the extent that they meet the definition as provided. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.3(71) - Definitions - Principal

COMMENT (32): Comment asserted that, by law, no limited partner may control a partnership.

STAFF RESPONSE: The definition of Principal is designed to address not only matters of law, but also what happens in fact. The Department's Counsel feels that the definition, as drafted, effectively addresses matters of law and fact. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.3(79) - Definitions - Qualified Nonprofit Development

COMMENT (17): Comment requested clarification as to whether the requirements cited in the definition should be connected by "and" or "or".

STAFF RESPONSE: Section 2306.6729 of the Texas Government Code requires that a qualified nonprofit organization must have controlling interest in the development if the application is submitted for the nonprofit set-aside. §42 of the IRS Code requires an ownership interest (directly or through a partnership) and material participation in the development operations. Staff recommends the following clarification:

(79) Qualified Nonprofit Development--A Development in which a Qualified Nonprofit Organization (directly or through a partnership or wholly-owned subsidiary):

(A) holds a controlling interest in the Development proposed to be financed from the nonprofit allocation pool (§2306.6729); and

(B) owns an interest in the Development and materially participates (within the meaning of the Code, §469(h), as it may be amended from time to time) in its development and operation throughout the Compliance Period, and otherwise meets the requirements of the Code, §42(h)(5). (§2306.6729)

BOARD RESPONSE: Accepted staff's recommendation.

§50.3(81) - Definitions - Rehabilitation

COMMENT (1, 18, 22, 23, 24, 25, 31, 35, 36, 41, 46): Significant comment was received that suggested that reconstruction should allow for demolished units to be reconstructed on a new site if the original site has negative environmental features, is located in a floodplain, has factors that make the site unsuitable for housing or the feasible operation of he project, if another location is in the best interest of the residents or for any other reasons acceptable to the Department. Comment also suggested that the definition allow reconstruction developments to exceed the original number of units that were demolished if the site is large enough for the additional units and if the additional units will be restricted to occupancy by renters at 50% of AMGI. Additional comment requested clarification regarding the difference between rehabilitation and reconstruction.

STAFF RESPONSE: Although staff understands the need for replacement of obsolete housing units, staff believes these requested changes create inequity in the competitive process. Housing Authorities may use the HTC program to create new units however they should not have a point advantage for Rehabilitation or reconstruction when they are not actually rehabilitating or reconstructing a development on the same site. Rehabilitation and reconstruction are defined in §50.3. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.3(82) - Definitions - Related Party

COMMENT (41): Comment suggested that the definition of Related Party be clarified to indicate that individuals who serve as Housing Authority commissioners do not count against the $2

million credit limitation for an entity related to a Housing Authority.

STAFF RESPONSE: The Department's General Counsel has opined that the $2 million limitation does statutorily apply to housing authority board members. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.3(84) - Definitions - Rural Area

COMMENT (16, 20, 40): Comment suggested that this definition not be changed as proposed, but that the 2007 definition be used. Commerters asserted that the definition, as proposed, would cause a substantial percentage of existing USDA 515s not to be considered to be rural developments because of the 50,000 population maximum.

STAFF RESPONSE: The definition of Rural Area is statutorily defined in §2306.004. The Department is unable to change that definition. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.3(85) - Definitions - Rural Development

COMMENT (16, 20): Comment suggested that if the Rural Area definition is not changed, many existing USDA 515s would not be considered to be rural developments.

STAFF RESPONSE: Staff believes the Department has conformed to the definition as defined in statute, §2306.004. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.5(a) - Ineligibility

COMMENT (1, 18, 22, 23, 24, 25, 31, 35, 41, 46): Significant comment was received that suggested that an application should be considered ineligible if there is participation by a governmental entity that is not legally authorized to operate in the area where the proposed project is located. Comment also suggested that a similar provision should be made for nonprofit organizations when their bylaws and articles of incorporation do not allow participation in a certain area.

STAFF RESPONSE: Staff believes that it is not the role of the Department to limit the areas of the state in which an organization or governmental entity may operate. Additionally, the suggestion would warrant greater staff scrutiny and public input prior to any rule change being recommended by staff. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.5(a)(8) - Ineligibility - One-Mile Three-Year Restriction

COMMENT (1, 11, 18, 22, 23, 24, 25, 31, 35, 41, 46): Comment suggested that an application should not be ineligible under the "one-mile three-year" rule if the proposed development receives funding from the Housing Authority Capital Fund. Other comment asserted that the one-mile limitation affects local communities' ability to encourage redevelopment in downtown and central city areas. Comment suggested that this rule be waived for inner-city areas.

STAFF RESPONSE: The one-mile, three-year restriction is a statutory requirement in §2306.6703 of the Texas Government Code. The parameters of the restriction are specifically identified in the statute. Staff recommends no change in response to comments received.

ADMINISTRATIVE CHANGE: Staff recommends the following revision to clarify the applicability of the restriction to Adaptive Reuse Developments:

(8) The Applicant proposes to construct a new Development proposing New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings) that is located one linear mile (measured by a straight line on a map) or less from a Development that: (§2306.6703(a)(3)).

(A) Serves the same type of household as the new Development, regardless of whether the Development serves families, elderly individuals, or another type of household (Intergenerational Housing is not a type of household as it relates to this restriction); and

(B) Has received an allocation of Housing Tax Credits (including Tax-Exempt Bond Developments) for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Volume I is submitted); and

(C) Has not been withdrawn or terminated from the Housing Tax Credit Program.

(D) An Application is not ineligible under this paragraph if:

(i) The Development is using federal HOPE VI funds received through the United States Department of Housing and Urban Development; locally approved funds received from a public improvement district or a tax increment financing district; funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.); or funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.); or

(ii) The Development is located in a county with a population of less than one million; or

(iii) The Development is located outside of a metropolitan statistical area; or

(iv) The local government where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under subparagraphs (A) - (C) of this paragraph. For purposes of this clause, evidence of the local government vote or evidence required by subparagraph (D) of this paragraph must be received by the Department no later than April 1, 2008 (or for Tax-Exempt Bond Developments no later than 14 days before the Board meeting where the credits will be committed) and may not be more than one year old.

(E) In determining the age of an existing Development as it relates to the application of the three-year period, the Development will be considered from the date the Board took action on approving the allocation of tax credits. In dealing with ties between two or more Developments as it relates to this rule, refer to §50.9(j) of this chapter.

BOARD RESPONSE: Accepted staff's recommendation.

§50.5(b)(2) and (3) - Disqualification and Debarment

COMMENT (32): Comment pointed out that the parties identified in the two cited paragraphs are inconsistent, and should be revised for consistency.

STAFF RESPONSE: Staff agrees with comment received. Staff recommends the parties identified in both subparagraphs be combined and included in both subparagraphs. Staff recommends the following:

(2) The Applicant, Development Owner, Developer or Guarantor or anyone that has Controlling ownership interest in the Development Owner, Developer or Guarantor, or any Affiliate of such entities that is active in the ownership or Control of one or more other rent restricted rental housing properties in the state of Texas administered by the Department is in Material Noncompliance with the LURA (or any other document containing an Extended Housing Commitment) or the program rules in effect for such property as further described in Chapter 60 of this title on May 1, 2008 for Competitive Housing Tax Credit Applications or for Tax-Exempt Bond Development Applications or other Applications not applying for Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) no later than 30 days after Volume III of the Application is submitted; (§2306.6721(c)(3)) or

(3) The Applicant, Development Owner, Developer, or any Guarantor, anyone that has Controlling ownership interest in the Development Owner, Developer or Guarantor, or any Affiliate of such entity that is active in the ownership or Control has been a Principal of any entity that failed to make all loan payments to the Department in accordance with the terms of the loan, as amended, or was otherwise in default with any provisions of any loans from the Department; or

BOARD RESPONSE: Accepted staff's recommendation.

§50.5(b)(4) - Disqualification and Debarment

COMMENT (32): Comment suggested that the requirement in the QAP that any outstanding fees be paid within 30 days is problematic because the timeframes for penalty payment under the Compliance rules are different.

STAFF RESPONSE: Staff in both the Multifamily and Compliance Divisions believes that the 30-day due date requirement, for both fees and penalties, is sufficient and does not pose inconsistencies. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.6(a) - Floodplain

ADMINISTRATIVE CHANGE: Staff recommends the following revision to clarify the applicability of the restriction to Adaptive Reuse Developments:

(a) Floodplain. Any Development proposing New Construction or Reconstruction and located within the 100 year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site so that all finished ground floor elevations are at least one foot above the flood plain and parking and drive areas are no lower than six inches below the floodplain, subject to more stringent local requirements. If no FEMA Flood Insurance Rate Maps are available for the proposed Development, flood zone documentation must be provided from the local government with jurisdiction identifying the 100 year floodplain. No buildings or roads that are part of a Development proposing Rehabilitation or Adaptive Reuse, with the exception of Developments with federal funding assistance from HUD or TX USDA-RHS, will be permitted in the 100 year floodplain unless they already meet the requirements established in this subsection for New Construction.

BOARD RESPONSE: Accepted staff's recommendation.

§50.6(d) - Credit Limit - $1.2 Million Limitation per Development

COMMENT (2, 6, 14, 33, 42, 47): In conjunction with comment that suggested additional credits be available for the cost of green building materials, comment also suggested that the $1.2 million limitation on tax credits to a single development be increased for the amount of additional tax credits awarded for green building materials. Other comment supported the addition of language allowing the adjustment of the $1.2 million limitation by CPI. Additional comment suggested that in order to encourage rehabilitation and reconstruction, the $1.2 million limitation should apply only to 9% housing tax credits, and not 4% acquisition tax credits. Other comment suggested that the $1.2 million limitation on developments should not apply when the proposed development is a permanent supportive housing project and supports a city's 10-year plan to end homelessness. Comment asserted that the $1.2 million limitation severely restricts the financing options available to these types of developments.

STAFF RESPONSE: Staff believes allowing additional tax credits for green building may be a reasonable request. However, it would require further research and input for staff to establish an appropriate recommendation for this year's QAP and would warrant additional public comment. Staff proposes this suggestion be incorporated into the 2009 QAP and commits to further research this issue. Staff recommends no change.

The current draft of the QAP approved by the Board in August addresses the CPI adjustment which staff will include in the 2008 Application Reference Manual. Staff recommends no change.

The $1.2 million limit currently only applies to Applications in the Competitive Application Round awarded from the State Housing Credit Ceiling and does not affect Tax-Exempt Bond Development Applications. The limit is designed to ensure that the Department can allocate Housing Tax Credits from the State Housing Credit Ceiling in a way that aids the maximum number of low-income Texans. Developments in the Competitive Application Round may receive only 4% tax credits for the acquisition of existing buildings even though the Application is in the Competitive Application Round. These 4% acquisition tax credits for Competitive Housing Tax Credit Applications are allocated from the State Housing Credit Ceiling just as 9% tax credits for Competitive Housing Tax Credit Applications are. Therefore, these 4% acquisition credits are included in the $1.2 million limitation. Staff recommends no change.

Although the Department strongly supports the mission and efforts of supportive housing providers, staff believes that excluding any group of Applicants from the $1.2 million limitation will produce inconsistencies in the competitive process. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.6(d) - Credit Limit - $2 Million Limitation to any Applicant, Developer, Related Party or Guarantor

COMMENT (1, 18, 19, 22, 23, 24, 25, 31, 35, 41, 46): Significant comment was received that asserted that it is unfair to evaluate Housing Authorities and nonprofit organizations for the $2 million limitation based on the participation of executive directors and individual board members. Comment suggested that applications by unrelated entities or applicants do not count against the $2 million limitation. Also, comment suggested that the $2 million limitation should not apply to consultants unless the consultant has an ownership interest in the development or will be paid a portion of the developer fee. Other comment suggested that a

per unit credit limitation be placed on developments. The comment asserted that this kind of limitation could greatly increase the amount of quality housing that is built and provide a necessary cutoff for developments that are extremely expensive.

STAFF RESPONSE: The Department's General Counsel is of the opinion that the statutory $2 million limitation does apply to nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors. Staff recommends no change.

Regarding the comment that the limit should not apply to consultants, consultants are already excluded from the $2 million limit, provided the consultant fee does not exceed 10% of the fee paid to the Developer or $150,000. Staff recommends no change.

Regarding the comment suggesting a per Unit tax credit limit, Competitive Housing Tax Credit Applications are already encouraged to limit the costs on which the amount of the tax credit allocation is based under §50.9(i)(8), Cost of the Development By Square Foot. 4% tax credits associated with Tax-Exempt Bond Developments are not allocated from the State Housing Tax Credit Ceiling, and do not affect the amount of tax credits available to other developments. Therefore, the QAP currently provides adequate incentives to encourage applicants to control the costs of developments. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.6(d)(4) - Credit Amount - Development Consultant Fee

COMMENT (36): Comment suggested that the allowable developer fee for Qualified Nonprofit Developments be 20% of the developer fee, as was allowed in the 2007 QAP.

STAFF RESPONSE: Staff believes that reducing the percentage paid to Consultants to 10% from 20% for Qualified Nonprofit Developments may reduce the number of Qualified Nonprofit Developments applying for tax credits and may jeopardize the Department's ability to meet the federal requirement that at least 10% of the Credit Ceiling be allocate to Qualified Nonprofit Developments. Staff therefore concurs with the comment and recommends the following revision that reflects the 2007 QAP language:

(4) To a Development Consultant with respect to the provision of consulting services, provided the Development Consultant fee received for such services does not exceed 10% of the fee to be paid to the Developer (or 20% for Qualified Nonprofit Developments), or $150,000, whichever is greater.

BOARD RESPONSE: Accepted staff's recommendation.

§50.6(e)(2) - Limitations on the Size of Developments, Rural Developments Involving New Construction

COMMENT (33, 36, 40, 44): Comment was received that suggested that Tax-Exempt Bond Developments in Rural Areas be allowed to exceed the 80 Unit new construction limit. The commenters asserted that the number of Units should be determined by market demand rather than an arbitrary number. Other comment suggested that some rural communities demand greater amounts of affordable housing and that this need should be allowed to be met using Tax-Exempt Bond financing. The commenter asserted that rural communities near MSAs may need larger developments, and that, as a compromise, if the market study supports the need for a larger Tax-Exempt Bond development and the development is proposed within 30 or 50 miles of an MSA, the size limitation should not apply. Additional comment requested that Rural Developments involving reconstruction do not have a size limitation.

STAFF RESPONSE: §2306.004, Texas Government Code, specifically defines a Rural Development and imposes a maximum limit of 80 Units for Developments proposed in Rural Areas. The Department has applied this restriction consistently to all Department programs. However, §1372 of the Texas Government Code, which governs the Tax-Exempt Bond program, allows for multiple site Applications (or pooled transactions). Pursuant to multiple site Applications, a rural site that exceeds 80 Units will be allowable.

ADMINISTRATIVE CHANGE: Staff recommends the following revision to clarify the applicability of this limitation to Adaptive Reuse:

(2) Rural Developments involving any New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings) will be limited to 80 Units (this includes individual Tax-Exempt Bond Developments). Rural Developments involving only Rehabilitation (excluding reconstruction) do not have a size limitation.

BOARD RESPONSE: Accepted staff's recommendation.

§50.6(e)(3) - Limitations on the Size of Developments, Urban Developments Involving New Construction

COMMENT (36): Comment requested clarification as to whether Tax-Exempt Bond Developments are restricted to 200 Department administered units.

STAFF RESPONSE: Staff agrees that clarification would be appropriate and proposes the following clarification:

(3) Urban Developments involving any New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings), in the Competitive Housing Tax Credit Application Round will be limited to 252 total Units, wherein the maximum Department administered Units will be limited to 200 Units. Tax-Exempt Bond Developments will be limited to 252 restricted and total Units. These maximum Unit limitations also apply to those Developments which involve a combination of Rehabilitation, Reconstruction, and New Construction. Only Developments that consist solely of acquisition/Rehabilitation or Rehabilitation may exceed the maximum Unit restrictions.

BOARD RESPONSE: Accepted staff's recommendation.

§50.6(e)(4) - Limitations on the Size of Developments, Second Phase Developments

COMMENT (36): Comment requested clarification as to whether the maximum Department administered unit restriction applies to the combined total of the first and second phases of the development, and whether this paragraph applies to Developments that involve Rehabilitation or Reconstruction and exceed the maximum allowable Development size. Comment also requested clarification on the definition of Sustaining Occupancy, and requested clarification regarding the language required for the resolution from the local political authority.

STAFF RESPONSE: Staff concurs with the need for clarification in this regard and recommends the following:

(4) For Applications that are proposing an additional phase to an existing tax credit Development or that are otherwise adjacent to an existing tax credit Development, the combined Unit total for the existing and proposed Developments may not exceed the

maximum allowable Development size set forth in this subsection unless:

(A) the first phase of the Development has been completed and has attained Sustaining Occupancy (as defined in §1.31 of this title) for at least six months; or

(B) a resolution from the governing body of the city or county in which the proposed Development is located, dated on or before the date the Application is submitted, is submitted with the Application. Such resolution must state that there is a need for additional Units and that the governing body has reviewed a market study, the conclusion of which supports the need for additional Units; or

(C) the proposed Development is intended to provide replacement of previously existing affordable Units on the Development Site or that were originally located within a one mile radius from the Development Site; provided, however, the combined number of Units in the proposed Development may not exceed the number of Units being replaced. Documentation of such replacement units must be provided.

BOARD RESPONSE: Accepted staff's recommendation.

§50.6(f) - Limitations on the Location of Developments

COMMENT (17, 11): Comment was received that suggested that the Department's concentration policies may be intended to deal with development in Houston. Comment suggested that if a property is zoned for multifamily development, no additional restrictions should be placed on the development. The commenter asserted that Houston's lack of zoning should not be an issue for the rest of the state. Other comment asserted that the one-mile limitation affects local communities' ability to encourage redevelopment in downtown and central city areas. Comment suggested that this rule be waived for inner-city areas.

STAFF RESPONSE: The one-mile rule is a statutory requirement in §2306.6711 and §2306.67021. The Department does not have the authority to waive statute. The one-mile rule only applies in counties over one million in population. Staff agrees with comments that zoning with local authorities is important. However, the Department has a responsibility to ensure that areas are not over-concentrated with affordable housing. The additional concentration concerns will be addressed in the agenda item for the Department's Real Estate Analysis Rules. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.6(g) - Limitations on Development in Certain Census Tracts

COMMENT (17): As noted in the prior comment, it is suggested that the Department's concentration policies may be intended to deal with development in Houston. Comment suggested that if a property is zoned for multifamily development, no additional restrictions should be placed on the development. The commenter asserted that Houston's lack of zoning should not be an issue for the rest of the state.

STAFF RESPONSE: Staff was directed by the Board in 2007 to establish additional requirements related to concentration to reduce over-saturation and promote greater geographic dispersion. The limitation in this section was developed to address the Board concerns. The additional concentration concerns will be addressed in the agenda item for the Department's Real Estate Analysis Rules. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.6(h) - Limitations on Developments Proposing to Qualify for a 30% Increase in Eligible Basis

COMMENT (1, 18, 22, 23, 24, 25, 31, 35, 46): Comment suggested that the limitation on the 30% increase in eligible basis should not apply to rehabilitation and reconstruction developments. Additional comment suggested that staff or the Board have discretion to release the limitation on the 30% increase in eligible basis when there is HOPE VI funding involved or when the local jurisdiction or city request the waiver for the de-concentration of public housing.

STAFF RESPONSE: Staff was directed by the Board in 2007 to establish additional requirements related to concentration. This limitation is recommended to address Board concerns. Additionally, the Board currently has the discretion to waive this requirement. The additional concentration concerns will be addressed in the agenda item for the Department's Real Estate Analysis Rules. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.
§50.7(b) Set-Asides

COMMENT (10): Comment was received that the Department does not have many set-asides. Comment asserted that other states have set-asides for targeting distressed areas and incentivizing neighborhood revitalization strategies. The commenter stated that it would be appropriate to set-aside funding for housing in those areas.

STAFF RESPONSE: It has been the Department's policy in recent years to equalize the availability of credits by not creating any set-asides other than those required by state or federal statute. However, the QAP provides multiple incentives in the selection criteria for developments located in areas that target revitalization, such as points under §50.9(i)(13) for existing housing in areas that are part of a community revitalization plan, points under §50.9(i)(15) for developments in areas targeted for economic development, and points under §50.9(i)(24) for developments in qualified census tracts that are targeted by community revitalization plans. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.7(b)(1) Nonprofit Set-Aside

COMMENT (50): Comment suggested that the language be revised to clearly state the level of compensation a Qualified Nonprofit Organization must receive in order to ensure that Qualified Nonprofit Organizations are fairly compensated for, and have adequate resources to achieve their required level of participation in a development. Comment suggested that Qualified Nonprofit Organizations competing in the Nonprofit Set-Aside must receive 25% of the developer fee in order to be eligible for the Nonprofit Set-Aside.

STAFF RESPONSE: This comment was received prior to the beginning of the public comment period, and was evaluated by staff in the preparation of the Draft 2008 QAP, approved by the Board on August 23, 2007. The level of compensation of different members of an ownership entity is a matter for negotiation between the parties involved in the creation of the partnership agreement. While staff is sensitive to the issues faced by Qualified Nonprofit Organizations, it is not the role of the Department to regulate the terms of partnership agreements. The intent of the Housing Tax Credit program is to create privately-owned and operated housing with limited government involvement. The QAP requires that the Qualified Nonprofit Organization have a controlling interest in the Development, and that it materially participates in the de-

velopment and operation of the development; the interest and participation are enforceable through the partnership agreement. Staff recommends no change.

BOARD RESPONSE: During the November 8, 2007 Board meeting, the Board instructed staff to include this comment in the Reasoned Response, despite the receipt of the comment outside of the public comment period.

§50.7(b)(2) - Regional Allocation Formula - USDA Set-Aside

COMMENT (16, 40): Comment asserted that the language regarding the exclusion of developments with USDA §538 funding, and the inclusion of developments with USDA §515 funding, regardless of other funding used, in the USDA Set-Aside is unclear. Comment asserted that the language as stated makes it unclear whether a development with both USDA §515 and §538 funding would be included or excluded, and requested clarification.

STAFF RESPONSE: §2306.111 states that any development financed wholly or in part with §538 funding from TRDO-USDA is not eligible under the At-Risk or USDA set-asides. Staff concurs with the need for clarification in the QAP and recommends the following language to ensure the statute is clearly reflected:

(2) At least 5% of the State Housing Credit Ceiling for each calendar year shall be allocated to Developments which are financed through TRDO-USDA, that meet the definition of a Rural Development, do not exceed 80 Units if proposing any New Construction (excluding New Construction of non-residential buildings), and have filed an "Intent to Request 2008 Housing Tax Credits" form by the Pre-Application submission deadline. (§2306.111(d)(2)). If an Application in this Set-Aside involves Rehabilitation it will be attributed to, and come from the, At-Risk Development Set-Aside; if an Application in this Set-Aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region. Developments financed through TRDO-USDA's §538 Guaranteed Rural Rental Housing Program, in whole or in part, will not be considered under this Set-Aside. Any Rehabilitation or Reconstruction of an existing §515 Development that retains the §515 loan and restrictions will be considered under the At-Risk Development and TRDO-USDA Set-Asides, unless such Development is also financed through TRDO-USDA's §538 Guaranteed Rural Rental Housing Program. Commitments of 2008 Competitive Housing Tax Credits issued by the Board in 2008 will be applied to each Set-Aside, Rural Regional Allocation, Urban Regional Allocation and/or TRDO-USDA Set-Aside for the 2008 Application Round as appropriate.

BOARD RESPONSE: Accepted staff's recommendation.

§50.7(b)(3) - Regional Allocation Formula - At-Risk Set-Aside

COMMENT (1, 17, 18, 22, 23, 24, 25, 31, 35, 46): Comment stated that the 15% At-Risk Set-Aside is correctly reflected in the proposed 2008 QAP. Additional comment suggested that Section 8 vouchers and Section 8 vouchers awarded under HUD's SHP program be eligible under the At-Risk Set-Aside.

STAFF RESPONSE: Staff concurs that the Set-Aside is correctly reflected and appreciates the comment. As noted earlier in this document, statute restricts the funding sources that are eligible under the At-Risk Set-Aside; therefore staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(a) Application Submission

ADMINISTRATIVE CHANGE: Staff proposes the following revision to clarify that required copies are a part of the Application that must be submitted to the Department:

(a) Application Submission. Any Applicant requesting a Housing Credit Allocation or a Determination Notice must submit an Application, and the required Application fee as described in §50.20 of this chapter, to the Department during the Application Acceptance Period. Only complete Applications will be accepted. All required volumes must be appropriately bound as required by the Application Submission Procedures Manual and fully complete for submission with all required copies and received by the Department not later than 5:00 p.m. on the date the Application is due. A searchable electronic copy of all required volumes and exhibits, unless otherwise indicated in the Application Submission Procedures Manual, must be submitted in the format of a single file presented in the order they appear in the hard copy of the complete Application on a CD-R clearly labeled with the report type, Development name, and Development location is required for submission and must be received by the Department not later than 5:00 p.m. on the date the Application is due. Only one Application may be submitted for a site in an Application Round. While the Application Acceptance Period is open, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original Pre-Application Fee that was paid as long as no evaluation was performed by the Department. The Department is authorized, but not required, to request the Applicant to provide additional information it deems relevant to clarify information contained in the Application or to submit documentation for items it considers to be an Administrative Deficiency, including ineligibility criteria, site and development restrictions, and threshold and selection criteria documentation. (§2306.6708) An Applicant may not change or supplement any part of an Application in any manner after the filing deadline, and may not add any Set-Asides, increase the requested credit amount, or revise the Unit mix (both income levels and bedroom mixes), except in response to a direct request from the Department to remedy an Administrative Deficiency as further described in §50.3(2) of this chapter or by amendment of an Application after a commitment or allocation of tax credits as further described in §50.17(d) of this chapter.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(b)(1) and (2), Ex Parte Communications

ADMINISTRATIVE CHANGE: Staff proposes the following revisions to clarify the dates and parties to which these requirements apply:

(1) During the period beginning on the first date of the Application Acceptance Period and ending on the date the Board makes a final decision with respect to the approval of any Application in that Application Round, a member of the Board may not communicate with the following Persons:

(A) an Applicant or Related Party; and

(B) any Person who is:

(i) active in the construction, rehabilitation, ownership, or Control of the proposed Development, including:

(I) a General Contractor; and

(II) a Developer; and

(II) a General Partner, Principal or Affiliate of a General Partner or General Contractor; or

(ii) employed as a consultant, lobbyist, or attorney by an Applicant or a Related Party.

(2) During the period beginning on the first date of the Application Acceptance Period and ending on the date the Board makes a final decision with respect to the approval of any Application in that Application Round, an employee of the Department may communicate about any Application with the following Persons:

(A) the Applicant or a Related Party; and

(B) any Person who is:

(i) active in the construction, rehabilitation, ownership, or Control of the proposed Development, including:

(I) a General Partner or General Contractor; and

(II) a Developer; and

(II) a Principal or Affiliate of a General Partner or General Contractor; or

(ii) employed as a consultant, lobbyist or attorney by the Applicant or a Related Party.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(c) - Adherence to Obligations

COMMENT (1, 12, 18, 22, 23, 24, 25, 31, 32, 33, 35, 36, 37, 40, 44, 46): Significant comment was received related to this subsection. In general, comment suggested that penalties be consistent with the seriousness of the offense, that penalties only be levied when the changes impact the development negatively, that the severity of the penalty increase with each subsequent offense, and that substitution of amenities be allowed. Some comment pointed out that the local jurisdiction may require a developer to make a change, and that going to the Department for approval may cost the development 30-60 days of construction; in addition, in many cases, these changes are value added features with no negative effect. Some specific suggestions are that the Development Owner's application should lose points when necessary evidence of points was not received by the required timeline; no penalties should be assessed if an amendment is submitted to and approved by the Department before placement in service; penalties should only be assessed if an amendment request is submitted after placement in service, threshold criteria are not met, or there is a loss of points for a selection criteria that is not remedied by a substitution of similar items for points; an applicant must provide amenities as alternatives to non-conforming components that represent a decrease to the development cost; a monetary penalty should be imposed for the first violation in a five-year period, $25,000 for example; a $25,000 penalty should be imposed for the first violation, without consideration for the time period; a monetary penalty should be imposed for the second violation in a five-year period, $50,000 for example; a $50,000 penalty should be imposed for the first violation, without consideration for the time period; for the first two instances of violations within a five (5) year period where a penalty is caused by a failure to provide one or more amenities promised in the Application, the Board may impose an alternate penalty of a fine equal to the value of the amenities that were promised but not provided, less the value of alternate amenities provided and approved by Department staff; for third and subsequent violations within five years, the application could be terminated and tax credits rescinded; third and subsequent violations should trigger the penalties currently outlined in the QAP; the penalty related to participation in the Tax-Exempt Bond program should be limited to 12 months rather than 24; the dates used to determine the period of penalties should be revised; the penalty of $1,000 per day should be stricken; for amendments that may be approved by the Executive Director, a fine of $5,000 should be imposed if the amendment has been implemented prior to Department approval.

STAFF RESPONSE: Staff appreciates all the public comment and input received. The draft language presented to the Board in August gives the Board flexibility in the administration of penalties. Currently, the draft allows the Board to impose a penalty of "up to" ten (10) points for the next two (2) consecutive competitive application rounds and/or exclude a Developer or Applicant from participation in the tax-exempt bond/housing tax credit program for "up to" twenty-four (24) months. Additionally, the current draft allows the Board to impose a monetary administrative penalty of "up to" $1,000 per day from the date the non-compliance is identified by the Department. Staff believes the intent of all the suggestions are covered in the current proposed language. The current proposed language does provide the Board the discretion to penalize Applicants for not building the Development as represented in the Application. Therefore, staff recommends no change.

BOARD RESPONSE: The Board amended the proposed language under §50.9(c)(3) of the QAP, as reflected below, based on a request for revision by staff during the Board meeting. This amendment was made to clarify the applicability of penalties to Developments for which amendments are approved by the Executive Director administratively.

(3) For amendments approved administratively by the Executive Director, the penalties in paragraph (2) of this subsection will not be imposed.

§50.9(d)(6) - Underwriting Evaluation and Criteria

COMMENT (2): Comment suggested that in order to encourage green building, applicants should be allowed to request and receive additional tax credits to recover the portion of the cost of green building items that are eligible for energy tax credits, but which are not covered by the energy tax credit.

STAFF RESPONSE: Applicants already have the ability to request tax credits for costs associated with green building materials as long as those costs can be substantiated. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(d)(6)(B)(ii) - Underwriting Evaluation and Criteria - Acquisition Developer Fee

ADMINISTRATIVE CHANGE: Staff proposes the following revision to clarify the maximum Developer fee that can be claimed for Developments of different sizes:

(ii) Acquisition/rehabilitation Developments that are eligible for acquisition credits pursuant to §42(b)(1)(B) U.S.C., the acquisition portion of the Developer fee cannot exceed 15% of the existing structures acquisition basis, less Developer fee if the Development proposes 50 total Units or more, or 20% of the project's Total Eligible Basis, less Developer fees if the Development proposes 49 total Units or less, and will be limited to 4% credits. The rehabilitation portion of the Developer fee cannot exceed 15% of the total rehabilitation basis, less Developer fee if the Development proposes 50 total Units or more, or 20% of the project's Total Eligible Basis, less Developer fees if the Development proposes 49 total Units or less.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(h)(4)(A)(ii)(IX) - Threshold Criteria - Threshold Amenities, Fitness Center

COMMENT (33, 36, 40, 44): Comment suggested that the number of fitness machines required for threshold amenity points be dependent on the number of Units in a Development because a large number of machines is not justifiable for smaller developments. Comment proposed one fitness machine for every forty (40) Units with a minimum of two (2) machines.

STAFF RESPONSE: Staff concurs and recommends the following language:

(IX) Furnished fitness center equipped with a minimum of two of the following fitness equipment options with at least one option per every 40 Units or partial increment of 40 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, sauna, stair climber, etc. The maximum number of equipment options required for any Development, regardless of number of Units, shall be five (2 points);

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(h)(4)(A)(ii)(XXV) - Threshold Criteria - Threshold Amenities, Green Building

COMMENT (33, 36, 40, 44, 47): Comment requested clarification regarding which features may qualify for green building and suggested that a test of monetary equivalency be applied so that only those features with similar cost be allowed to receive the same amount of points. Additional comment suggested that evaporative coolers be included in this item. The commenter asserted that evaporative coolers are accepted by the EPA, IRS, and RESNET in the federal energy credit.

STAFF RESPONSE: Staff concurs that a test of monetary equivalency is reasonable; however, the development of such a test would involve considerable research by staff and additional public comment. Therefore, staff recommends this issue be addressed for the 2009 QAP, giving the applicant community and staff ample time to conduct the necessary research, and give all parties an opportunity to comment prior to the adoption of the rule. Staff recommends no change.

Staff concurs that evaporative coolers should be included in this item and recommends the following revision:

(XXV) Green Building (for example, evaporative coolers, passive solar heating/cooling, water conserving fixtures, collected water (at least 50%) for irrigation purposes, sub-metered electric meters, exceed Energy Star standards, photovoltaic panels for electricity and design and wiring for the use of such panels, construction waste management, provide recycle service, water permeable walkways and parking areas, or other Department approved items). (3 points); or

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(h)(4)(B) - Threshold Criteria - Threshold Amenities

COMMENT (45): Comment suggested that the amenities provided to tenants free of charge as a part of threshold criteria serve the needs of the disabled. Comment suggested that in developments serving family and elderly populations 10% of units be compliant with the Americans with Disabilities Act of 1990 and that for developments serving elderly populations 20% of units be compliant with the Americans with Disabilities Act of 1990. Comment also suggested that a minimum of 15% of Units should be fully accessible (wheel chair accessible) to those with limited mobility.

STAFF RESPONSE: Staff agrees that all Developments be compliant with ADA requirements, and the QAP currently requires applicants to comply with the Americans with Disabilities Act of 1990 to the extent it applies to residential properties. The QAP also requires that 5% of the Units be accessible. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(h)(4)(B)(iii) - Threshold Criteria - Threshold Amenities, Dishwasher and Disposal

COMMENT (33, 36, 40, 44, 49): Comment stated that requiring new dishwashers is excessive and wasteful for rehabilitation development, particularly in rural areas. Additional comment asserted that disposals do not have energy star ratings and requested clarification on this requirement.

STAFF RESPONSE: The QAP does not require new dishwashers, but rather requires Energy Star or equivalently rated dishwashers. Staff believes that energy efficient dishwashers are a desirable amenity to all tenants, even those in rehabilitation and rural developments and encourages energy efficiency. Staff concurs with the attestation that garbage disposals do not have Energy Star or equivalent ratings. Staff recommends the following language:

(iii) Disposal and Energy-Star or equivalently rated dishwasher (not required for TRDO-USDA or SRO Developments);

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(h)(4)(B)(iv) - Threshold Criteria - Threshold Amenities, Refrigerator

COMMENT (49): Comment stated that requiring new refrigerators is excessive and wasteful for rehabilitation development, particularly in rural areas.

STAFF RESPONSE: The QAP does not require new refrigerators, but rather requires Energy Star or equivalently rated refrigerators. Staff believes that energy efficient refrigerators are a desirable amenity to all tenants, even those in rehabilitation and rural developments and encourages energy efficiency. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(h)(4)(B)(v) - Threshold Criteria - Threshold Amenities, Oven

COMMENT (49): Comment stated that requiring new ovens is excessive and wasteful for rehabilitation development, particularly in rural areas.

STAFF RESPONSE: The QAP does not require new ovens, but rather requires Energy Star or equivalently rated ovens. Staff believes that energy efficient ovens are a desirable amenity to all tenants, even those in rehabilitation and rural developments and encourages energy efficiency. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(h)(4)(B)(vii) - Threshold Criteria - Threshold Amenities, Ceiling Fans

COMMENT (49, 19): Comment stated that requiring new ceiling fans is excessive and wasteful for rehabilitation development, particularly in rural areas. Additional comment suggested that flexibility be allowed for rehabilitation and renovation developments with regard to the ceiling fan requirement.

STAFF RESPONSE: The QAP does not require new ceiling fans, but rather requires Energy Star or equivalently rated ceiling fans. Staff believes that energy efficient ceiling fans are a desirable amenity to all tenants, even those in rehabilitation and rural developments and encourages energy efficiency. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(h)(4)(B)(ix) - Threshold Criteria - Threshold Amenities, Emergency 911 Telephones

COMMENT (49): The comment asserted that requiring 911 telephones could bar development in some rural areas because 911 access is often not available in rural areas.

STAFF RESPONSE: Staff understands the problem with 911 access; however, staff believes that either a public phone or an emergency phone is a necessary amenity. Staff recommends the following change:

(ix) Emergency 911 or public telephone accessible and available to tenants 24 hours a day.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(h)(5)(A)(ii) - Threshold Criteria - Building Floor Plans and Elevations

COMMENT (34): Comment suggested that the requirements for adaptive reuse developments should be modified to accommodate the unique nature of adaptive reuse floor plans. Comment suggested the addition of the following requirements for adaptive reuse developments: "building plans delineating each unit by number, type, and area consistent with those in the Rent Schedule and provide photos of each elevation of the existing building depicting the height of each floor and percentage estimate of the exterior composition."

STAFF RESPONSE: Staff concurs with the commenter. Staff has already incorporated this language into the draft QAP that was approved by the Board in August. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(h)(5)(A)(iii) - Threshold Criteria - Unit Floor Plans

COMMENT (34): Comment suggested that the definition of "each unit type" be modified to accommodate adaptive reuse developments, which typically have multiple, distinct unit types. Comment suggested that the QAP require "unit floor plans for each distinct type of unit (1 Bedroom, 1 Bath; Two Bedroom, One Bath; Two Bedroom, Two Bath; etc.) and for all units that vary in area by 10% (or 50 sf, etc.) from the typical unit."

STAFF RESPONSE: Staff concurs with the commenter. Staff has already incorporated this language into the draft QAP that was approved by the Board in August. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(h)(7)(A)(iii) - Threshold Criteria - Evidence of Property Control

ADMINISTRATIVE CHANGE: Staff proposes the following revision to clarify the types of documentation acceptable for evidence of property control, and the time period during which the control must be effective:

(iii) A contract for sale, or an exclusive option to purchase or lease which is valid for the entire period the Development is under consideration for tax credits. For Tax Exempt Bond Development Applications, site control must be valid through December 1, 2007 with option to extend through March 1, 2008 (Applications submitted for lottery) or 90 days from the date of the bond reservation with the option to extend through the scheduled TDHCA Board meeting at which the award of Housing Tax Credits will be considered. The potential expiration of site control does not warrant the Application being presented to the TDHCA Board prior to the scheduled meeting.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(h)(7)(A)(iv)(III) - Threshold Criteria - Evidence of Property Control

COMMENT (1, 18, 22, 23, 24, 25, 31, 33, 35, 36, 40, 41, 44, 46): Comment suggested that acquisition costs be allowed to exceed the lesser of the original acquisition cost plus holding costs or the "as is" value identified in the appraisal if the applicant has owned the land for at least five years. In that case, the applicant should be allowed to use the appraised value to substantiate acquisition cost. The commenter assert that this requirement will prevent "flipping" while providing a reasonable alternative to providing years of invoices to substantiate holding costs. Additional comment suggested that the appraised value should be used to substantiate acquisition costs, without placing additional limitations with regard to the period of time an owner has owned the property. Comment asserted that the current requirement places an undue burden on housing authorities that are trying to rebuild dilapidated housing that may have been constructed 60 years ago.

STAFF RESPONSE: Staff does not believe that the fact that a property has been held for five years provides any assurance against the practice of "flipping"; a period of five years holds no particular significance with regard to the value of a property. The purpose of the identity of interest requirements in the QAP is to ensure that an identity of interest transaction does not result in a profit for the seller. Without documentation of holding costs, in addition to an appraisal, the Department cannot evaluate whether the transaction will result in a profit. The period of time that the property has been owned is not relevant in this evaluation. In addition, the proposed language does not represent a new Department requirement, but rather formalizes a process that has been historically used by the Department to evaluate the feasibility of a proposed development. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(h)(7)(B)(i)(I) - (III) - Threshold Criteria - Zoning

COMMENT (36): Comment requests clarification regarding how a letter relating to land use can be required when no zoning exists.

STAFF RESPONSE: Many jurisdictions that do not have zoning ordinances do have comprehensive plans that address issues such as affordable housing and other land uses. In the absence of zoning ordinances, the requirement for a letter of consistency with a consolidated plan or other planning document, or statement of the need for affordable housing allows the Department a level of assurance that the development is consistent with the goals of the local jurisdiction. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(h)(7)(C) - Threshold Criteria - Evidence of Interim and Permanent Financing

COMMENT (1, 18, 22, 23, 24, 25, 31, 35, 46): Comment suggested that if a commitment for development funding is provided by a governmental entity, a governmental instrumentality, or an affiliate of such, that the governmental entity, governmental instrumentality, or affiliate of such must provide evidence that the organization is legally authorized to operate in the area where the development is proposed.

STAFF RESPONSE: Staff feels that it is not the role of the Department to limit the areas of the state in which an organization or governmental entity may operate. This suggestion would warrant greater staff scrutiny and public input prior to any rule change being recommended by staff. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(h)(8)(A)(ii) - Threshold Criteria - Notifications

COMMENT (12, 21, 38): Comment suggested that applicants should be required to mail written notifications to directors of Municipal Utility Districts ("MUD"). The commenter asserted that omitting MUD directors from required notifications negatively affects areas outside of the corporate boundaries of a municipality. Additional comment suggested that notifications should be made to all special districts, such as school districts, college districts, business improvement districts, municipal management districts, tax increment reinvestment zones, in which the applicant's site is located.

STAFF RESPONSE: Notifications required in the QAP are consistent with statute. Beginning in January 2008, the Department will implement an electronic mailing system that allows notification to any email address registered with that system for tax credit applications proposed in any specified zip code. Staff suggests the special management and utility districts subscribe to this service once it is available and will be notifying those districts of the availability of the new system. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(h)(8)(B) - Threshold Criteria - Signage on Property or Alternative

COMMENT (1, 18, 22, 23, 24, 25, 31, 35, 36, 41, 46): Comment requested that the proposed language requiring a sign to be posted unless prohibited by local ordinance be stricken. The commenter asserts that the applicant should be able to choose between posting a sign and mailing notifications, and that written notifications ensure that those most affected by the proposed development are notified. Additional comment suggested that the requirement to post public hearing information should be deleted, or should be revised so that the hearing information must be posted once it is released by the Department. Comment asserted that the public hearing information will not be known by the application deadline.

STAFF RESPONSE: It is the Department's position that the public is better served by the posting of a public sign, as opposed to mailed notifications. A sign provides true public notification. The Department has historically released public hearing information approximately a month in advance of the signage posting date for the Competitive Housing Tax Credit Round, allowing ample time for applicants to include this information on the required posted signage by March 1. The Department will adopt a similar timeline for the release of public hearing information in 2008 so that applicants will have the information needed to meet Department notification requirements by the application submission deadline. Staff recommends no change.

ADMINISTRATIVE CHANGE: Staff recommends the addition of the following sentence to clarify the evidence required when local ordinance prohibits the posting of a sign:

If Public Notification Sign is prohibited by local ordinance or code, evidence of the applicable ordinance or code must be submitted in the Application.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(h)(8)(C) - Threshold Criteria - Notifications for Developments with Occupied Units

ADMINISTRATIVE CHANGE: Staff proposes the following revision to clarify the information that must be provided to current tenants of a Development:

(C) If any of the Units in the Development are occupied at the time of Application, then the Applicant must certify that it has notified each tenant at the Development of all the information otherwise required on the sign, including the Department's public hearing schedule for comment on submitted Applications.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(h)(9) - Threshold Criteria - Evidence of the Development's Proposed Ownership Structure

COMMENT (1, 18, 22, 23, 24, 25, 31, 35, 41, 46): Comment suggested that if the proposed structure of the owner or developer includes a governmental entity, a governmental instrumentality, or an affiliate of such, that the governmental entity, governmental instrumentality, or affiliate of such must provide evidence that the organization is legally authorized to operate in the area where the development is proposed. Similarly, comment suggested that nonprofit entities included in the structure of the owner or developer provide evidence in the form of bylaws or articles of incorporation to show that they are authorized to operate in the area where the development is proposed.

STAFF RESPONSE: Staff believes that it is not the role of the Department to limit the areas of the state in which an organization or governmental entity may operate. This suggestion would warrant greater staff scrutiny and public input prior to any rule change being recommended by staff. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(i) - Selection Criteria, General

COMMENT (29, 30, 38, 48): Comment suggested that all input by community stakeholders should impact the score for a development, so that comment is evaluated in the final determination of an award for any particular development. Additional comment suggested that input from MUD directors should impact the score for a development. The commenter asserted that MUD directors represent small constituencies and because of this they are able to provide meaningful input regarding proposed developments. Comment suggested the addition of incentive points for applicants using USDA's §538 Guaranteed Rural Rental Housing Program who submit all required information in order for USDA to receive applications by June 1st. Comment asserted that the timing of application submissions to USDA can be challenging for USDA and that having applications two months earlier would allow USDA to fund more developments.

STAFF RESPONSE: Statute clearly requires that the Department award points for input received from neighborhood organizations and State Representatives and Senators. Staff is sensitive to the needs of the communities and districts impacted by proposed developments and currently offers extensive opportunities for public comment, in the form of public hearings, public comment at monthly board meetings, and written comment. An additional scoring item to allow all community stakeholders to impact scoring would be excessive, considering the existing opportunities for public comment. In addition, such a scoring item may have a disproportionately greater impact on the outcome of awards than the actual merits of a development, as well as increase the ability for communities to prevent the provision of very needed affordable housing in their community. Staff recommends no change.

Staff does not feel that providing incentive points for timely submissions of application materials to other agencies is an appropriate use of selection criteria. If applicants want funding from another agency they should proactively follow that agency's process and should need no incentive from the Department to do so. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(i)(2)(A)(vi) - Selection Criteria - Quantifiable Community Participation

COMMENT (1, 18, 22, 23, 24, 25, 31, 32, 33, 35, 36, 38, 40, 41, 42, 44, 46): Comment suggested deleting the proposed requirement that applicants may not request that a Neighborhood Organization expand their boundaries to include the development site. Commenters asserted that the dialog that must happen for a development to be added to the boundaries of a neighborhood organization promotes exactly the type of interaction the scoring criteria was designed for. Additional comment suggested that Neighborhood Organizations located within two to three miles of a proposed development be allowed to provide comment for points under this paragraph. The commenter asserted that multifamily developments may affect the quality of life in communities located miles from the site, and allowing Neighborhood Organizations located two to three miles from a proposed site provides the opportunity for affected members of the community to provide meaningful input. Other comment suggested that resident councils should be able to comment not only on rehabilitation or reconstruction, but also on new construction if the proposed new construction is within the boundaries of the property in which they reside, or within the boundaries of their organization. The commenters asserted that the Department should not penalize a resident council because they reside in public housing.

STAFF RESPONSE: Staff concurs with the comment regarding the ability for an applicant to request that a Neighborhood Organization to expand its boundaries and recommends the following revision:

(vi) Accurately certify that the Neighborhood Organization was not formed by any Applicant, Developer, or any employee or agent of any Applicant (the seller of land is not considered, with the exception of an identity of interest, to be an agent of the Application) in the 2008 Competitive Housing Tax Credit Application Round, that the organization and any member did not accept money or a gift to cause the Neighborhood Organization to take its position of support or opposition, and has not provided any assistance other than education and information sharing to the Neighborhood Organization to meet the requirements of this subparagraph for any Application in the Application Round (i.e. hosting a public meeting, providing the "TDHCA Information Packet for Neighborhoods" to the Neighborhood Organization, or referring the Neighborhood Organization to TDHCA staff for guidance). Applicants may not provide any "production" assistance to meet these requirements for any Application in the Application Round (i.e. use of fax machines owned by the Applicant, use of legal counsel related to the Applicant, or assistance drafting a letter for the purposes of this subparagraph).

Statute is clear that the Department must award points on the basis of written statements from any neighborhood organizations whose boundaries contain the proposed development; therefore Neighborhood Organizations located two to three miles from a proposed development, whose boundaries do not include the proposed development site are prohibited from providing comment under this scoring item. These organizations may still make comment regarding any proposed Development; such comment will be summarized and presented to the Department's Board. Staff recommends no change.

As noted above, resident councils may be eligible to the extent that they meet the definition as provided. Staff recommends no change.

§50.9(i)(2)(B)(iv)

ADMINISTRATIVE CHANGE: Staff recommends the following revision to §50.9(i)(2)(B)(iv) to clarify the methodology used to establish the score for an Application that receives more than one eligible letter:

(iv) If an Application receives multiple eligible letters the average score of all eligible letters will be applied to the Application.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(i)(3)(B) - Selection Criteria - Income Levels of Tenants

COMMENT (6, 14, 19, 36, 47): Comment suggested that the new language that provided greater incentive to do units at 50% and 30% of AMGI be deleted, and that language from the 2007 QAP be retained. The commenters requested that instead of allowing 22 points for having 40% of Units at or below a combination of 50% and 30% of AMGI with 5% at or below 30% of AMGI, the points be allowed for having 10% of Units at or below 30% of AMGI. Comment suggested that this reversion to 2007 QAP language be instituted for counties along the Texas-Mexico border at the least. Further, comment suggested that Housing Authority applicants who are subsidizing rent and operating expenses with HUD money be excluded from these points. The commenter asserted that Housing Authorities already receive other benefits that give them unfair advantages over the private sector, and an ability to operate less efficiently than private sector developments. Comment applauded the Departments efforts to create housing for households at 30% of AMGI, and asserted that the tax credit program has produced enough housing to meet the needs of households at 60% of AMGI. Other comment applauded the Department's efforts to increase mixed income development through the revision of this subparagraph, but asked for an increase in the percentage of units that must serve households at 30% of AMGI. Comment suggested that 10% of units be set aside for households at 30% of AMGI, rather than 5%.

STAFF RESPONSE: Staff appreciates the comment related to the reversion to the 2007 QAP language; however, the relatively small number of commenters indicates a general satisfaction with the revised language. In addition, the Department seeks to provide incentives to serve persons at various levels of AMGI throughout the state. Furthermore, there is indication

that in some markets, units for persons at the 60% AMGI level, are becoming saturated and this shift of the highest points away from that income level range will hopefully diversify the income levels of those being served to minimize saturation. Staff does not recommend different standards for certain counties as the median income level varies by county and already accounts for geographic variances.

Regarding the request to increase the percentage of units serving households at 30% of AMGI to a level greater than that in the draft rule, staff believes this would be a significant change that would warrant additional comment prior to implementation. Staff recommends no change to the 2008 QAP, but will explore the possibility of revising the 2009 QAP to incorporate this comment.

Regarding the request to exclude Housing Authorities from eligibility for this scoring item, statute requires the Department to award points based on the income levels of tenants without limitation. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(i)(4)(B) - Selection Criteria - Quality of Units

ADMINISTRATIVE CHANGE: Staff proposes the following revision to clarify how many points certain development types may receive under this scoring item:

(B) Quality of the Units. Applications may qualify to receive up to 14 points. Applications in which Developments provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in clauses (i) - (xix) of this subparagraph, not to exceed 14 points in total. Applications involving scattered site Developments must have all of the Units located with a specific amenity to count for points. Applications involving Rehabilitation (excluding reconstruction) or single room occupancy may receive 1.5 points for each point item, not to exceed 14 points in total.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(i)(4)(B)(xvii) - Selection Criteria - Quality of Units

ADMINISTRATIVE CHANGE: Staff recommends the following revision to clarify the applicability of this item to Adaptive Reuse:

(xvii) 14 SEER HVAC or evaporative coolers in dry climates for New Construction Adaptive Reuse, and reconstruction or radiant barrier in the attic for Rehabilitation (excluding reconstruction) (3 points);

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(i)(5) - Selection Criteria - Commitment of Development Funding by Local Political Subdivisions

COMMENT (1, 8, 9, 16, 18, 21, 22, 23, 24, 25, 31, 32, 33, 35, 36, 40, 41, 42, 44, 46, 47): Loan Terms: Comment suggested that the proposed requirement that a loan be for a minimum term of five years be deleted. Commenters instead suggested that either a minimum one-year term, or the greater of one year or placement in service dated be required. Commenters asserted that local governments cannot make mid- and long-term loans in today's climate, and that a five-year term has no role in the tax credit financing because it is too long to be short-term construction financing, and is too short to be permanent financing. Other comment asserted that the San Antonio HUD Office has instructed participating jurisdictions to limit HOME loans made in connection with tax credit developments be limited to one year, meaning that applicants who get HOME loans from participating jurisdictions will not be able to receive points under this paragraph. Other comment asserted that Housing Authorities must get the Attorney General's permission for loans with terms longer than one year. Additional comment suggested that the requirement that a loan must be at or below the Applicable Federal Rate ("AFR") at the time of application is problematic, and that the language should be revised so that the loan is at or below AFR on the date of funding.

In-Kind contributions: Further comment requested clarification as to whether the value of an in-kind contribution of the leasehold value of land is restricted to the value between August 1, 2008 and placement in service, rather than the entire value of the leasehold. The commenters asserted that if this is the case, the restriction is unfair and needs to be deleted. Comment instead suggested that the entire value of the contribution of land on a lease value should be allowed to count for points under this paragraph. Other comment suggested that the new language restricting the time period for which an in-kind contribution can count for points is unnecessary and the full value of a contribution should be used. Additional comment stated support for the addition of language clarifying that the value of in-kind contributions can only be claimed for the period between August 1, 2008 and placement in service.

USDA and HOME Funds: Other comment suggested that developments that receive a combination of USDA §§515 and 538 financing should be allowed to receive points under this paragraph for the USDA funding. Other comment suggested that USDA §538 funding, without being combined with USDA §515 funding, should be eligible for points under this paragraph. The commenters asserted that this would provide a benefit to these developments to make up for the fact that they are potentially excluded from the USDA Set-Aside. Additional comment suggested that the Department allow the amount of city HOME funds used for points under this item to be determined using a gap method that determines the tax credit amount first.

Other Comments: Additional comment pointed out that "special districts" are included in the definition of "Local Government" in Chapter 2306 of Texas Government Code, and should be allowed to be involved in the scoring process of an application. Additional comment requested the deletion of this scoring item altogether. The commenter asserted that if a project is feasible without community funding, the criteria should not be imposed.

STAFF RESPONSE: Statute requires the Department to award points for funding from local political subdivisions; therefore this scoring item cannot be deleted.

Staff feels that a change in language to require minimum loan terms of the later of one year or placement in service is reasonable. The Department cannot create policy based on the practices of other agencies; therefore no change is recommended related to HUD's practices for awarding HOME funds. Staff feels that requiring that a loan be at or below AFR at the time of funding is reasonable. Staff recommends the following language related to these comments:

(iv) A loan does not qualify as an eligible source unless it has a minimum term of the later of 1-year or the Placed in Service date, and the interest rate must be at the Applicable Federal Rate (AFR) or below (at the time of loan closing).

In-kind contributions that result in a quantifiable reduction in Total Development Cost may count for points under this paragraph. The limit on the value of contributions between August 1, 2008 and placement in service is a reasonable guideline by which the

Department may evaluate the actual impact on Total Housing Development Cost, because this time period is a reasonable estimate of the construction period for a development. Staff recommends no change.

In-kind contributions of land produce a quantifiable reduction in Total Housing Development Cost; therefore, the Department considers the full value of in-kind contributions of land, whether in the form of donation or ground lease, for points under this paragraph. Staff recommends the following language revision to provide additional clarification:

(v) In-kind contributions such as donation of land, tax exemptions, or waivers of fees such as building permits, water and sewer tap fees, or similar contributions are only eligible for points if the in-kind contribution provides a tangible economic benefit that results in a quantifiable Total Housing Development Cost reduction to benefit the Development will be acceptable to qualify for these points. The quantified value of the Total Housing Development Cost reduction may only include the value during the period the contribution or waiver is received and/or assessed. Donations of land must be under the control of the Applicant, pursuant to §50.9(h)(7) of this chapter to qualify. The value of in-kind contributions may only include the time period between award, or August 1, 2008 and the Development's Placed in Service date, with the exception of contributions of land. The full value of land contributions, as established by the appraisal required pursuant to clause (viii) of this subparagraph. Contributions in the form of tax exemptions or abatements may only count for points if the contribution is in addition to any tax exemption or abatement required under statute.

While the Department seeks to encourage developments that use USDA funding, statute specifically requires the Department to award points to developments that receive funding from local political subdivisions; therefore, allowing federal funds not administered by a local political subdivision would represent a violation of statute. Staff recommends no change.

The comment related to the determination of the amount of the tax credit relates to underwriting and will be addressed in the agenda item relating to the Real Estate Analysis Rules.

In reference to the request that "special districts" be allowed to affect the Application selection, "special districts" may already participate if they meet the definition of Local Political Subdivision or Governmental Instrumentality, and can provide evidence to that effect. Staff recommends no change.

ADMINISTRATIVE CHANGE: Staff recommends the following revision to clarify the eligibility of Department HOME funds for this scoring item:

(vi) To the extent that a Notice of Funding Availability (NOFA) is released and funds are available, funds from TDHCA's HOME Investment Partnerships (HOME) Program will qualify if a resolution, dated on or before the date the Application Acceptance Period ends, is submitted with the Application from the Local Political Subdivision authorizing the Applicant to act on behalf of the Local Political Subdivision in applying for HOME Funds from TDHCA for the particular Application. TDHCA's HOME funds may be substituted for a source originally submitted with the Application, provided the HOME funds substituted are from a NOFA released after the Application Acceptance Period ends and a resolution is submitted with the substitution documentation from the Local Political Subdivision authorizing the Applicant to act on behalf of the Local Political Subdivision in applying for HOME Funds from TDHCA for the particular Application.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(i)(6) - Selection Criteria - Support from State Representative or State Senator

COMMENT (1, 18, 22, 23, 24, 25, 31, 35, 36, 41, 46): Comment suggested that in cases where one letter of support and one letter of opposition are received from the State Representative and State Senator, the letters should not cancel each other out and result in a score of zero, but that seven points should be awarded instead. Additional comment requested the addition of language that clarifies that the maximum negative points an application can receive are -14.

STAFF RESPONSE: All comment from State Representatives and State Senators are highly valued by the Department. Giving more weight to comments of support than to opposition does not fairly account for all input from State Representatives and State Senators; therefore staff recommends no language change with regard to this comment. Staff concurs that the maximum negative points should be explicitly stated and recommends the following change:

(6) The Level of Community Support from State Representative or State Senator. The level of community support for the Application, evaluated on the basis of written statements received from the State Representative or State Senator that represents the district containing the proposed Development Site. (§2306.6710(b)(1)(F) and (f); §2306.6725(a)(2)). Applications may qualify to receive 14 points for this item. Letters of support must identify the specific Development and must clearly state support for or opposition to the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative or Senator by April 1, 2008. State Representatives or Senators to be considered are those State Representatives or Senators in office at the time the Application is submitted. Letters of support from State Representatives or Senators that do not represent the district containing the proposed Development Site will not qualify for points under this Exhibit. Neutral letters, or letters that do not specifically refer to the Development, will receive neither positive nor negative points. Letters from State of Texas Representative or Senator: support letters are +14 points; opposition letters are -14 points for a maximum of either 14 or -14 points. If one letter is received in support and one letter is received in opposition the score would be 0 points.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(i)(7) - Selection Criteria - Rent Levels of Units

COMMENT (11): Comment suggested that the emphasis on 100% rent-restricted developments is often in conflict with the local jurisdiction's initiatives, is harmful to downtown revitalization and contributes to the concentration of affordable housing in certain neighborhoods. Comment suggested that the Department award points to mixed-income developments equal to the points awarded for 100% rent-restricted developments.

STAFF RESPONSE: Staff appreciates the comment regarding the encouragement of mixed-income developments. A revision to this item to provide a new point structure is a material change that would require additional public comment. The Department will explore the possibility of providing additional incentives for mixed-income developments for the 2009 QAP. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(i)(8) - Selection Criteria - Cost of the Development by Square Foot

COMMENT (2, 3, 4, 5, 7, 13, 36, 37, 39, 47): Comment requested that the maximum cost per square foot be increased for all developments and areas of the state to address rising construction costs. Other comment suggested that the limit for elderly, transitional, and single room occupancy ("SRO") developments be increased to $88 from $85; the limit for elderly, transitional, and single room occupancy ("SRO") developments in First Tier Counties be increased to $90 from $87; the limit for all other developments, unless located in a First Tier County, be increased to $78 from $75; and the limit for all other developments located in a First Tier County be increased to $80 from $77. Additional comment suggested that cost per square foot maximums be increased each year commensurate with CPI or some other inflation index, similar to the new language regarding §50.6(d) Credit Amount. Other comment suggested that maximum cost per square foot figures should not apply to parking structures, including parking garages and underground parking. The commenter asserts that applying the maximums to parking structures negatively affects urban developments that seek to provide dense, pedestrian-friendly development, and to combat urban sprawl. Comment also suggested that the applicant not be allowed to claim tax credits for the cost of the parking structure, but in exchange there should not be a point penalty associated with the cost. Additional comment requested that cost per square foot maximums for single family construction be the same as those of elderly developments. Other comment requested that SRO developments be exempt from the $85 per square foot limit, and should qualify for the points under this paragraph automatically to encourage state of the art construction and rehabilitation.

STAFF RESPONSE: This scoring item is designed to provide an incentive for the efficient construction of developments, so that the Department can allocate housing tax credits in a way that aids the maximum number of low-income Texans. The Department increased the cost per square foot by over 6% for 2007 and costs appear to have stabilized. Staff does not believe there is a need to adjust costs at this time. In addition, staff believes that all developments should be encouraged to be built in a cost-effective manner, and does not feel that exempting a particular development type from cost per square foot limits is consistent with this goal. Staff recommends no change.

Regarding the suggestion to exclude the cost of parking structures from this scoring item, this suggestion is inconsistent with the purpose of this scoring item, which is to provide an incentive for the cost-effective construction of Development. The costs of all of the buildings in a development, regardless of their inclusion in eligible basis, impact the total costs of a Development and should be included in the calculation of development cost for this scoring item. Staff recommends no change.

Staff agrees that single family design should be the same as elderly developments and has already incorporated this change into the draft 2008 QAP approved by the Board in August. Staff recommends no change.

BOARD RESPONSE: The Board instructed staff to award amend the language to allow net rentable area to include elevator served interior corridors for single room occupancy Developments, consistent with public comment. The amended language is as follows:

(8) The Cost of the Development by Square Foot (Development Characteristics). Applications may qualify to receive 10 points for this item. (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)). For this exhibit, costs shall be defined as construction costs, including site work, direct hard costs, contingency, contractor profit, overhead and general requirements, as represented in the Development Cost Schedule. This calculation does not include indirect construction costs. The calculation will be costs per square foot of net rentable area (NRA). For the purposes of this paragraph only, if the proposed Development is an elevator building serving elderly, a single room occupancy Development, or a high rise building serving any population, the NRA may include elevator served interior corridors. The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule of the Application. Developments qualify for 10 points if their costs do not exceed $85 per square foot for Qualified Elderly, single family design, transitional, and single room occupancy Developments (transitional housing for the homeless and single room occupancy units as provided in the Code, §42(i)(3)(B)(iii) and (iv)), unless located in a "First Tier County" in which case their costs do not exceed $87 per square foot; and $75 for all other Developments, unless designated as "First Tier" by the Texas Department of Insurance, in which case their costs do not exceed $77 per square foot. For 2007, the First Tier counties are Aransas, Brazoria, Calhoun, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, San Patricio, and Willacy. There are also specifically designated First Tier communities in Harris County that are east of State Highway 146, and evidence in the Application must include a map with the Development site designated clearly within the community. These communities are Pasadena, Morgan's Point, Shoreacres, Seabrook and La Porte. Intergenerational Developments will receive 10 points if costs described above do not exceed the square footage limit for elderly and non-elderly units as determined by using the NRA attributable to the respective elderly and non-elderly units. The Department will determine if points will be awarded by multiplying the NRA for elderly units by the applicable square footage limit for the elderly units and adding that total to the result of the multiplication of the NRA for family units by the applicable non-elderly square footage limit. If this maximum cost amount is equal to, or greater than the total of the costs identified above for the Application, points will be awarded (10 points).

§50.9(i)(9) - Selection Criteria - Services to be Provided to Tenants

COMMENT (17, 41): Comment suggested that the Department create a mechanism to ensure that applicants who receive points under this paragraph follow through and provide the services they commit to in the application. Comment requested clarification as to why notary public services are deemed more important to tenants than the other services under this paragraph.

STAFF RESPONSE: The Compliance Monitoring Division of the Department already actively monitor for the services committed to in the application and as provided in the Land Use Restriction Agreement. The state legislature specifically directed the Department to provide points for "free notary public services" in addition to other supportive services; therefore, the QAP places a greater importance for these services than other services. Staff recommends no change.

BOARD RESPONSE: The Board denied staff's recommendation and instructed staff to award one point for the provision of notary

public services, consistent with public comment. The amended language for §50.9(i)(9)(A)(i)(III) is as follows:

(III) Seven points will be awarded for providing six of the services.

The amended language for §50.9(i)(9)(B) is as follows:

(B) In addition, Applications will receive 1 point for providing Notary Public Services to tenants at no cost to the tenant. This will be included in the LURA.

§50.9(i)(10) - Selection Criteria - Declared Disaster Areas

COMMENT (33, 36, 40, 42, 44): Comment requested clarification regarding which disaster areas will be eligible under this paragraph because, depending on the disaster declarations used, all 254 Texas counties may be eligible for these points. Additional comment requested clarification as to whether a disaster must have been declared within the two-year period before application submission, or whether disaster declarations not declared within this two-year period, but for which the time period covered by the declaration is within this two-year period count for points under this paragraph.

STAFF RESPONSE: As defined in the newly revised §50.3(38), a Disaster Area is an area that has been declared as a federal or state disaster and has specifically experienced the disaster identified in the declaration. The Applicant will be required to provide a copy of the declaration under which the Applicant is seeking to receive points. If proposed location of the Development has not actually experienced the disaster stated in the declaration, the Application will not be eligible for the points. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(i)(11) - Selection Criteria - Rehabilitation (which includes Reconstruction) or Adaptive Reuse

COMMENT (4, 7, 13, 32, 39): Comment suggested that this paragraph be clarified to include adaptive reuse developments in the development types that may qualify for points. Comment asserted that the exclusion of "New Construction of non-residential buildings" may exclude adaptive reuse from this item because this description is used for adaptive reuse elsewhere in the QAP. Additional comment requested that all single room occupancy ("SRO") developments be allowed to qualify for points under this paragraph. The commenter asserted that SRO developments typically are required to build more units and to substantially rebuild spaces to create "state of the art" units. Other comment requested that New Construction be allowed for points under this item with respect to Adaptive Reuse.

STAFF RESPONSE: Staff concurs that the paragraph should clarify that adaptive reuse developments are eligible to receive the points; this clarification will also address the language that restricts "New Construction of non-residential buildings". This criterion is designed to promote the use of existing housing or structures in the development of housing tax credit developments; therefore a revision to allow new construction SRO developments to qualify under this item would not be consistent with the intent of the scoring item. SRO developments may qualify for points to the extent that they meet the requirements of this paragraph. Staff recommends no change related to this comment. Staff recommends the following language revisions for Adaptive Reuse:

(11) Rehabilitation, (which includes reconstruction) or Adaptive Reuse. Applications may qualify to receive 6 points. Applications proposing to build solely Rehabilitation (excluding New Construction of non-residential buildings), solely reconstruction (excluding New Construction of non-residential buildings), or solely Adaptive Reuse qualify for points.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(i)(13) - Selection Criteria - Development Includes the Use of Existing Housing as Part of a Community Revitalization Plan

COMMENT (4, 7, 13, 39): The commenter asserted that adaptive reuse development encourage rebuilding in targeted community revitalization zones, just like existing housing does, and that adaptive reuse developments should qualify for points under this paragraph. Other comment supported the addition of Adaptive Reuse to this paragraph. Additional comment suggested that single room occupancy ("SRO") developments be allowed to qualify for points under this paragraph if rehabilitation or reconstruction is involved in the revitalization area.

STAFF RESPONSE: This selection criterion addresses a federal selection criteria requirement and was developed specifically to provide incentives for the use of existing housing in conjunction with revitalization. Adaptive reuse, by definition, is not existing housing; therefore the addition of that class of development would be inconsistent with the intent of this scoring item. A SRO development can already qualify under this paragraph, as long as it meets the definition of Existing Residential Development. SRO developments that propose the adaptive use of non-residential buildings do not meet the requirement of the scoring item. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(i)(15) - Selection Criteria - Economic Development Initiatives

COMMENT (3, 4, 13, 32, 33, 36, 37, 39, 40, 42, 44): Comment suggested that points should not be prohibited if more than three Housing Tax Credit developments have been awarded in the area in the past seven years, but that a limitation that considers the size of the developments and the size of the community be used. Some comment suggested that the same tests used in §50.6(g) and (h) be used, limiting points to developments in census tracts with less than 30% or 40% Housing Tax Credit units per total households. Other comment opposed the new scoring criteria because it will be difficult to receive points under this paragraph and §50.9(i)(16), Development Location. Additional comment requested that tax increment reinvestment zones, pursuant to Chapter 311 of the Texas Tax Code, be added to the list of areas that are eligible for points under this paragraph. Other comment requested clarification as to how the area will be defined, for example, will the area be the location of the organization that receives funding, the service area of an organization that receives funding, or the location of the residence of the individual that receives services. Further comment pointed out that this new scoring item does not require the types of evidence of funding required under §50.9(i)(5) of the QAP. The commenter suggested that additional language be added to clarify evidence required regarding the amount and type of funding in order to substantiate the points awarded.

STAFF RESPONSE: Regarding the limitation for areas with existing Housing Tax Credit Developments, staff feels that limiting points to areas in which more than three tax credit awards have not been made in the past seven years is reasonable. The limitations in §50.6(g) and (h) are already applied to all Developments, and would therefore offer no meaningful additional limi-

tations, and would be duplicative in nature. Staff recommends no change.

While staff appreciates that Applicants desire to qualify under as many scoring items as possible, challenges related to the ability to qualify under multiple items do not provide sufficient basis for the inclusion or exclusion of any particular scoring item. Staff recommends no change.

This scoring item was designed to provide incentives for the development of housing in the areas targeted for economic development by the state and federal funding sources. Tax increment reinvestment zones are designated at the local level and are not consistent with the intent of this item to provide incentives for development in areas targeted at the state and federal levels. Staff recommends no change.

Staff concurs that additional clarification regarding the interpretation of "area" for this scoring item is needed and recommends the following revision:

(15) Economic Development Initiatives. A Development that is located in one of the following two areas may qualify to receive 4 points. For the purpose of this paragraph, "area" shall mean the boundaries of any zone or community in subparagraph (A) or the area in which funds in subparagraph (B) must be used:

Staff concurs that additional clarification regarding the evidence required for this item is needed. Specific requirements will be included in the 2008 application materials. In addition, staff recommends the following revision:

(C) Points under subparagraphs (A) and (B) of this paragraph will not be granted if more than 3 tax credit Developments have been awarded in that area in the last 7 years. The Applicant must provide evidence of the boundaries of the area, as required in the Application and Application Submission Procedures Manual.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(i)(16)(F) - Selection Criteria - Development Location

COMMENT (15, 32, 43): Comment suggested that the use of the word "area" to describe the locations eligible for points under this subparagraph is not sufficiently descriptive. Comment suggested that a more specific description such as "city," "census tract," or "zip code" be used. Other comment suggested that this subparagraph be deleted so that Qualified Elderly Developments eligible for points under this subparagraph are instead eligible for points under §50.9(i)(19). Further comment asserted that this subparagraph contemplates the same concept as §50.9(i)(19).

STAFF RESPONSE: Staff concurs with comment that suggested that this subparagraph contemplates the same concept as §50.9(i)(19). In addition, staff concurs that a better description of area is needed. Staff recommends the deletion of this subparagraph in conjunction with the recommended language change to §50.9(i)(19). Deleting §50.9(16)(F) and revising §50.9(i)(19) resolves the issue of a broad description of area by using census tracts as the defined location; and eliminates scoring criteria that are conceptually duplicative. Staff recommends the earlier proposed revision to §50.9(16)(F) be deleted.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(i)(17) - Selection Criteria - Development Location in Non-Urban Areas

COMMENT (1, 18, 22, 23, 24, 25, 31, 35, 41, 46, 47): Comment requested clarification regarding the reason for the decrease in point value from 7 point in 2007 to 6 points in 2008. Comment asserted that there is no justifiable basis for awarding six points merely because a development is in a location with a population less than 100,000. Comment suggested that this scoring item be deleted from the QAP, or be lowered to three points.

STAFF RESPONSE: The Department's governing statute requires the use of ten scoring criteria, which must be given point values in specific descending order. In the 80th legislative session, the tenth of these items was added making it necessary to adjust the point value of some of the criteria that had ranked below the initial first nine of the ten items to make "room" for the insertion of the tenth highest item. In an effort to geographically disperse developments within the Urban area of regions, the Department has created a selection criteria to encourage locations in non-rural areas with populations less than 100,000. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(i)(18) - Selection Criteria - Demonstration of Community Support Other than Quantifiable Community Participation

COMMENT (47): Comment provided support for the language additions in this paragraph. Comment also requested clarification regarding the reason for the decrease in point value from 7 point in 2007 to 6 points in 2008.

STAFF RESPONSE: The Department's governing statute requires the use of ten scoring criteria, which must be given point values in specific descending order. In the 80th legislative session, the tenth of these items was added making it necessary to adjust the point value of some of the criteria that had ranked below the initial first nine of the ten items to make "room" for the insertion of the tenth highest item. Staff appreciates the feedback regarding the revised language.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(i)(19) - Selection Criteria - Developments in Census Tracts with No Other Existing Developments Supported by Tax Credits

COMMENT (43, 47): Comment requested clarification regarding the reason for the decrease in point value from 7 points in 2007 to 6 points in 2008. Additional comment suggested that language be revised so that points are awarded under this paragraph if there are no other housing tax credit developments in the census tract or if there are no other housing tax credit developments in the area that serve the same population. Further comment asserted that this paragraph contemplates the same concept as §50.9(i)(16)(F).

STAFF RESPONSE: The reasoning for the reduction in points has been described on each of the prior comments. Awarding points based on the presence of other developments that serve the same population is reasonable. Staff recommends the following language:

(19) Developments in Census Tracts with No Other Existing Same Type Developments Supported by Tax Credits: The Application may receive 6 points if the proposed Development is located in a census tract in which there are no other existing Developments supported by Housing Tax Credits that serve the same type of household, regardless of whether the development serves families, or elderly individuals (Intergenerational Housing is not a type of household as it relates to this paragraph). Applicant must provide evidence of the census tract in which the Development is located. (§2306.6725(b)(2)). These Census Tracts are outlined in the 2008 Housing Tax Credit Site Demographic Characteristics Report.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(i)(22)(B) - Selection Criteria - Negative Site Features

COMMENT (26, 33): Comment expressed concern over the location of a proposed 2007 development across the street from a county jail. The commenter suggested that the location of a development in close proximity to a jail is not consistent with the Department's mission to provide safe housing. Additional comment suggested that the distance from the development to the negative feature be measured from the closest residential building, rather than site boundary. The commenter asserted that the current language penalizes developments on large sites.

STAFF RESPONSE: The Department appreciates the comment regarding proximity to criminal justice facilities, and the safety of potential tenants. Although staff understands the concern, it is important to consider that proximity to a criminal justice facility may also be seen as a positive in providing needed housing for workers in the facility. Regarding the location from which measurements should be made, staff feels that measuring from the development site's boundaries is more reasonable. The entire development site is available for use by tenants, and it is therefore reasonable to consider the site boundaries, rather than the closest building's boundaries, proximity to negative features. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(i)(22)(B)(vi) - Selection Criteria - Negative Site Features, Sexually Oriented Businesses

COMMENT (33, 36, 40, 44): Comment requested clarification of what constitutes a sexually oriented business.

STAFF RESPONSE: Staff concurs and proposes the following language which utilizes the legislative definition for a sexually oriented business:

(vi) Developments where the buildings are located adjacent to or within 300 feet of a sexually oriented business will have 1 point deducted from their score. For the purpose of this clause, sexually oriented business shall be defined as stated in §243.002 of the Texas Government Code.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(i)(22)(B)(vii) - Selection Criteria - Negative Site Features, Accident Zones or Flight Paths of Airports

COMMENT (4, 13, 32, 33, 36, 39, 40, 42, 44): Comment suggested that "flight path" is too broad a term and that a development's location in an airport "clear zone" should trigger a point deduction under negative site features. Additional comment suggested that point deductions for location in a "flight path" be deleted from the QAP, and pointed out that flight path maps are not available to the public, or as an alternative, that a definition for flight path be established. The commenter asserted that sites within flight paths, but far from active airports are not at risk of accidents and excessive noise. Further comment asserts that the environmental assessment required by the Department includes a noise study that is a good indicator of the impact of noise, and is more appropriate than deducting points. Other comment suggested that the term "flight path" lacks specificity and that some FAA standard should be used. Comment suggested that a limitation on the location of a development in the flight patch closest to the airport, for example within a 1 mile radius, in urban areas. Comment also suggested that if there is existing residential development near the development proposed in a flight path, the development should be permitted.

STAFF RESPONSE: The Department has conducted research regarding a definition for "flight path" and concurs with comment that a clear definition or list of such areas is not readily available from any agency that regulates air traffic or local airports. Therefore, staff recommends the following revision:

(vii) Developments where the buildings are located within the accident zones or clear zones for commercial or military airports will have 1 point deducted from their score.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(i)(25)(B) - Selection Criteria, Sponsor Characteristics

COMMENT (32): Comment expressed concern about the requirement that a Historically Underutilized Business ("HUB") materially participate in the development throughout the compliance period. The commenter asserted that a HUB should be allowed to sell its general partner interest in year 10 if it so desires. The commenter also asserted that requiring a HUB to stay in a deal or sell its interest to another HUB restricts the pool of purchasers of the general partner interest.

STAFF RESPONSE: Although staff appreciates the comment, the participation of a HUB is not a threshold requirement and may be selected at the option of the applicant. However, once selected the Department wants to ensure that the participation of a HUD continues for the development. It is the goal of the Department to encourage meaningful participation by HUBs, not to award points for participation that may easily be terminated. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(i)(29)(B) - Selection Criteria - Scoring Imposing Penalties

COMMENT (2, 32): Comment suggested that penalty points with regard to removal by a lender, equity provider, or limited partners be limited to removals occurring within six years of an allocation of tax credits. Comment asserted that flat rents, increasing utility allowances, increasing operating expense, and other uncontrollable market conditions may cause good, qualified developers to be in default on an older property. The commenter suggested that the penalty period should correspond to the typical guarantee period. Additional comment suggested that the language be revised to assess the penalty on the Applicant and that in order for the penalty to be imposed, a party must have served as the general partner or managing member of a limited partnership or limited liability company owning a tax credit property.

STAFF RESPONSE: The requirement to apply this penalty is statutory and statute does not provide for a limitation on the time during which a removal may have occurred to warrant the penalty, nor does it limit penalties only to those with a certain level of participation. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.9(j)(1)(A) - Tie Breaker Factors

ADMINISTRATIVE CHANGE: Staff recommends the following revision to clarify the applicability of this subparagraph to Adaptive Reuse:

(A) Applications involving any Rehabilitation or Reconstruction of existing Units will win this first tier tie breaker over Applications involving solely New Construction or Adaptive Reuse.

BOARD RESPONSE: Accepted staff's recommendation.

§50.11(a)(4) - Public Hearings

COMMENT (28): Comment suggested that public hearings should be held in locations that are more convenient for members of the community that are impacted by proposed developments. The commenter asserted that a large number of community members were present at a meeting regarding a 2007 development that was held in the community, but that a smaller group attended the Department's public hearing because the location was less convenient.

STAFF RESPONSE: Staff is sensitive to the needs of the communities impacted by proposed developments and the Department currently offers extensive opportunities for public input, in the form of public hearings, public comment at monthly board meetings, and written comment. The Department does hold public hearings near the proposed development site for specific Tax-Exempt Bond Developments that use the Department as the bond issuer. In an effort to make public hearings more accessible to the public, the Department holds a greater number of public hearings than is required by statute for Competitive Housing Tax Credit applications. Due to the large number of applications and the variety of locations covered by these applications, it is infeasible for staff to hold public hearings near every location that could be impacted by a housing tax credit development. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.12(b) - Applicability of Rules for Tax-Exempt Bond Developments

COMMENT (36): Comment requested clarification as to whether a letter of consistency with the local consolidated plan, or a statement affirming the need for affordable housing is required in the 2008 QAP.

STAFF RESPONSE: To be consistent with this requirement under the Competitive Housing Tax Credit program the letter of consistency with the local consolidated plan, or a statement affirming the need for affordable housing will only be required in instances where the development is located within the boundaries of a political subdivision that does not have a zoning ordinance. This requirement is already outlined in §50.9(h)(7)(B) of the QAP. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.14(a)(1) and (3) - Carryover

ADMINISTRATIVE CHANGE: Staff recommends the following revisions to clarify the applicability of these paragraphs to Adaptive Reuse:

(1) The Development Owner for all New Construction and Adaptive Reuse Developments must have purchased the Development Site.

(3) For all Developments involving New Construction or Adaptive Reuse, evidence of the availability of all necessary utilities/services to the Development site must be provided. Necessary utilities include natural gas (if applicable), electric, trash, water, and sewer. Such evidence must be a letter or a monthly utility bill from the appropriate municipal/local service provider. If utilities are not already accessible, then the letter must clearly state: an estimated time frame for provision of the utilities, an estimate of the infrastructure cost, and an estimate of any portion of that cost that will be borne by the Development Owner. Letters must be from an authorized individual representing the organization which actually provides the services. Such documentation should clearly indicate the Development property. If utilities are not already accessible (undeveloped areas), then the letter should not be older than three months from the first day of the Application Acceptance Period.

BOARD RESPONSE: Accepted staff's recommendation.

§50.15(b)(4) - Cost Certification

COMMENT (2, 33, 36, 44): Comment suggested that IRS Forms 8609 should not be withheld for a development for which the applicant is in material noncompliance on other properties. Commenters assert that this penalty would ultimately affect the investor community, possibly resulting in a decrease in the number of investors willing to do business in Texas.

STAFF RESPONSE: Staff appreciates the comment with regard to the issuance of IRS Forms 8609. The QAP does not state that IRS Forms 8609 will be withheld as a result of the compliance evaluation, but merely that the evaluation will be performed. It is the intent of staff that should an event such as this occur, the information would be shared with the Executive Director and possibly the Board prior to issuance of the IRS Forms 8609. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.16(k) Return of Credits

COMMENT (47): Comment provided support for the new language penalizing applicants who return tax credits after the Carryover deadline. Comment asserted that returns negatively affect the community in which the award was made, and affects future tax credits that the Department is able to receive from National Pool.

STAFF RESPONSE: Staff concurs and appreciates the feedback regarding the revised language.

BOARD RESPONSE: Accepted staff's recommendation.

§50.17(c) - Challenges

COMMENT (33, 36, 40, 44): Comment supported the imposition of submission deadlines for challenges to active applications.

STAFF RESPONSE: Staff concurs and appreciates the feedback regarding the revised language.

BOARD RESPONSE: Accepted staff's recommendation.

§50.17(d) - Amendment of Applications

COMMENT (32): Comment asserted that it is imperative that this paragraph be revised to accommodate changes to §50.9(c), Adherence to Obligations.

Staff Response: Refer to Staff Response for §50.9(c). Staff recommends no change at this time.

BOARD RESPONSE: Accepted staff's recommendation.

§50.20(h) - Building Inspection Fees

COMMENT (40): Comment requested that the language from the 2006 QAP be reinstated. The commenter requested that developments that receive financing through USDA not have construction inspections performed by the Department, and as a result, not be required to pay a building inspection fee.

STAFF RESPONSE: Although it may be more efficient to use the same inspections, the two agencies tend to inspect for different items. Therefore, to ensure that the Development is being completed as presented, the Department does require construction inspections. The 2006 QAP language provided that

"Developments receiving financing through TX-USDA-RHS *that will not have construction inspections performed through the Department* will be exempt from the payment of an inspection fee" *(emphasis added).* The 2006 language is no longer applicable because the Department does perform construction inspections for all developments financed through USDA. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

§50.20(l) - Extension and Amendment Requests

COMMENT (32): Comment suggested that the fees required under this paragraph be examined to provide relief to applicants who, because of recent requirements to submit amendment requests in advance of the action for which the amendment is being requested, may be subject to multiple amendment fees. The commenter suggested that perhaps amendments that must go before the Board are subject to a higher fee than those that may be processed administratively; or amendments requested in advance are subject to a lower fee than those not requested in advance; or that the first amendment be subject to a higher fee than subsequent amendments.

STAFF RESPONSE: Staff appreciates the comment related to the issue of multiple amendment fee payments. However, the Department is committed to processes that ensure that applicants adhere to those obligations made in the application. Providing relief to applicants that repeatedly deviate from the representations made in the application is not consistent with the goal of minimizing those deviations. Staff recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

The new sections are adopted pursuant to authority granted in Chapter 2306, Texas Government Code, Subchapter DD ("Low Income Housing Tax Credit Program"), which requires the Department to administer the low income housing tax credit program; and specifically §2306.67022, which requires the Department to adopt annually a qualified allocation plan.

§50.1. Purpose and Authority; Program Statement; Allocation Goals.

(a) Purpose and Authority. The Rules in this chapter apply to the allocation by the Texas Department of Housing and Community Affairs (the Department) of Housing Tax Credits authorized by applicable federal income tax laws. The Internal Revenue Code of 1986, §42, (the "Code") as amended, provides for credits against federal income taxes for owners of qualified low-income rental housing Developments. That section provides for the allocation of the available tax credit amount by state housing credit agencies. Pursuant to Chapter 2306, Subchapter DD, Texas Government Code, the Department is authorized to make Housing Credit Allocations for the State of Texas. As required by the Internal Revenue Code, §42(m)(1), the Department developed this Qualified Allocation Plan (QAP) which is set forth in §§50.1 - 50.23 of this chapter. Sections in this chapter establish procedures for applying for and obtaining an allocation of Housing Tax Credits, along with ensuring that the proper threshold criteria, selection criteria, priorities and preferences are followed in making such allocations.

(b) Program Statement. The Department shall administer the program to encourage the development and preservation of appropriate types of rental housing for households that have difficulty finding suitable, accessible, affordable rental housing in the private marketplace; maximize the number of suitable, accessible, affordable residential rental units added to the state's housing supply; prevent losses for any reason to the state's supply of suitable, accessible, affordable residential rental units by enabling the Rehabilitation of rental housing or by providing other preventive financial support; and provide for the participation of for-profit organizations and provide for and encourage the participation of nonprofit organizations in the acquisition, development and operation of accessible affordable housing developments in rural and urban communities. (§2306.6701)

(c) Allocation Goals. It shall be the goal of this Department and the Board, through these provisions, to encourage diversity through broad geographic allocation of tax credits within the state, and in accordance with the regional allocation formula; to promote maximum utilization of the available tax credit amount; and to allocate credits among as many different entities as practicable without diminishing the quality of the housing that is being built. The processes and criteria utilized to realize this goal are described in §§50.7, 50.8 and 50.9 of this chapter, without in any way limiting the effect or applicability of all other provisions of this title. (General Appropriation Act, Article VII, Rider 8(e))

§50.2. Coordination with Rural Agencies.

To ensure maximum utilization and optimum geographic distribution of tax credits in rural areas, and to provide for sharing of information, efficient procedures, and fulfillment of Development requirements in rural areas, the Department will coordinate on existing, Rehabilitation, and New Construction housing Developments financed by TRDO-USDA; and will administer the Rural Regional Allocation with the Texas Office of Rural Community Affairs (ORCA). Through participation in hearings and meetings, ORCA will assist in developing all Threshold, Selection and Underwriting Criteria applied to Applications eligible for the Rural Regional Allocation. The Criteria will be approved by that Agency. To ensure that the Rural Regional Allocation receives a sufficient volume of eligible Applications, the Department and ORCA shall jointly implement outreach, training, and rural area capacity building efforts. (§2306.6723)

§50.3. Definitions.

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

(1) Adaptive Reuse--The renovation or rehabilitation of an existing non-residential building or structure (e.g., school, warehouse, office, hospital, etc., including physical alterations that modify the building's previous or original intended use. If any Units are built outside the original building footprint, the Development will be considered New Construction.

(2) Administrative Deficiencies--The absence of information or inconsistent information in the Application as is required under §§50.5, 50.6, 50.8 and 50.9 of this chapter, unless determined by the Department as unable to be corrected.

(3) Affiliate--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with any other Person, and specifically shall include parents or subsidiaries. Affiliates also include all General Partners, Special Limited Partners and Principals with an ownership interest unless the entity is an experienced Developer as described in §50.9(h)(9)(D) of this chapter.

(4) Agreement and Election Statement--A document in which the Development Owner elects, irrevocably, to fix the Applicable Percentage with respect to a building or buildings, as that in effect for the month in which the Department and the Development Owner enter into a binding agreement as to the housing credit dollar amount to be allocated to such building or buildings.

(5) Applicable Fraction--The fraction used to determine the Qualified Basis of the qualified low-income building, which is the smaller of the Unit fraction or the floor space fraction, all determined as provided in the Code, §42(c)(1).

(6) Applicable Percentage--The percentage used to determine the amount of the Housing Tax Credit for any Development (New Construction, Reconstruction, and/or Rehabilitation), as defined more fully in the Code, §42(b).

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

(i) 40 basis points over the current applicable percentage for 70% present value credits, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department, or

(ii) 15 basis points over the current applicable percentage for 30% present value credits, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department.

(B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based in order of priority on:

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

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

(iii) The percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

(7) Applicant--Any Person or Affiliate of a Person who files a Pre-Application or an Application with the Department requesting a Housing Credit Allocation. (§2306.6702)

(8) Application--An application, in the form prescribed by the Department, filed with the Department by an Applicant, including any exhibits or other supporting material. (§2306.6702)

(9) Application Acceptance Period--That period of time during which Applications for a Housing Credit Allocation from the State Housing Credit Ceiling may be submitted to the Department, December 3, 2007 through February 29, 2008, as more fully described in §§50.8 - 50.12 of this chapter. For Tax-Exempt Bond Developments this period is the date the Volumes 1 and 2 are submitted or the date the reservation is issued by the Texas Bond Review Board, whichever is earlier.

(10) Application Round--The period beginning on the date the Department begins accepting Applications for the State Housing Credit Ceiling and continuing until all available Housing Tax Credits from the State Housing Credit Ceiling (as stipulated by the Department) are allocated, but not extending past the last day of the calendar year. (§2306.6702)

(11) Application Submission Procedures Manual--The manual produced and amended from time to time by the Department which sets forth procedures, forms, and guidelines for the filing of Pre-Applications and Applications for Housing Tax Credits.

(12) Area--

(A) The geographic area contained within the boundaries of:

(i) An incorporated place or

(ii) Census Designated Place (CDP) as established by the U.S. Census Bureau for the most recent Decennial Census.

(B) For Developments located outside the boundaries of an incorporated place or CDP, the Development shall take up the Area characteristics of the incorporated place or CDP whose boundary is nearest to the Development site.

(13) Area Median Gross Income (AMGI)--Area median gross household income, as determined for all purposes under and in accordance with the requirements of the Code, §42.

(14) At-Risk Development--A Development that: (§2306.6702)

(A) has received the benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive under at least one of the following federal laws, as applicable:

(i) Sections 221(d)(3) and (5), National Housing Act (12 U.S.C. §17151);

(ii) Section 236, National Housing Act (12 U.S.C. §1715z-1);

(iii) Section 202, Housing Act of 1959 (12 U.S.C. §1701q);

(iv) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. §1701s);

(v) The Section 8 Additional Assistance Program for housing Developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of Housing and Urban Development;

(vi) The Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development;

(vii) Sections 514, 515, and 516, Housing Act of 1949 (42 U.S.C. §§1484, 1485, and 1486); or

(viii) Section 42, of the Internal Revenue Code of 1986 (26 U.S.C. §42), and

(B) Is subject to the following conditions:

(i) The stipulation to maintain affordability in the contract granting the subsidy is nearing expiration (expiration will occur within two calendar years of July 31 of the year the Application is submitted); or

(ii) The federally insured mortgage on the Development is eligible for prepayment or is nearing the end of its mortgage term (the term will end within two calendar years of July 31 of the year the Application is submitted).

(C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in subparagraph (A) of this paragraph will not qualify as an At-Risk Development unless the redevelopment will include the same site.

(D) Developments must be at risk of losing all affordability from all of the financial benefits available on the Development, provided such benefit constitutes a subsidy, described in subparagraph (A) of this paragraph on the site. However, Developments that have an opportunity to retain or renew any of the financial benefit described in

subparagraph (A) of this paragraph must retain or renew all possible financial benefit to qualify as an At-Risk Development.

(E) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a qualified contract under §42 of the Code. Evidence must be provided in the form of a copy of the recorded LURA, the first years' IRS Forms 8609 for all buildings showing Part II completed and, if applicable, documentation from the original application regarding the right of first refusal.

(15) Bedroom--A portion of a Unit which is no less than 100 square feet; has no width or length less than 8 feet; has at least one window that provides exterior access; and has at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to accommodate 5 feet of hanging space. A den, study or other similar space that could reasonably function as a bedroom and meets this definition is considered a bedroom.

(16) Board--The governing Board of the Department. (§2306.004)

(17) Carryover Allocation--An allocation of current year tax credit authority by the Department pursuant to the provisions of the Code, §42(h)(1)(C) and Treasury Regulations, §1.42-6.

(18) Carryover Allocation Document--A document issued by the Department, and executed by the Development Owner, pursuant to §50.14(a) of this chapter.

(19) Carryover Allocation Procedures Manual--The manual produced and amended from time to time by the Department which sets forth procedures, forms, and guidelines for filing Carryover Allocation requests.

(20) Code--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the United States Department of the Treasury or the Internal Revenue Service.

(21) Colonia--A geographic Area that is located in a county some part of which is within 150 miles of the international border of this state, that consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood, and that (§2306.581):

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

(B) Has the physical and economic characteristics of a colonia, as determined by the Department.

(22) Commitment Notice--A notice issued by the Department to a Development Owner pursuant to §50.13 of this chapter and also referred to as the "commitment."

(23) Community Revitalization Plan--A published document under any name, approved and adopted by the local governing body by ordinance or resolution, that targets specific geographic areas for revitalization and development of residential developments.

(24) Competitive Housing Tax Credits--Tax credits available from the State Housing Credit Ceiling.

(25) Compliance Period--With respect to a building, the period of 15 taxable years, beginning with the first taxable year of the Credit Period pursuant to the Code, §42(i)(1).

(26) Control--(including the terms "Controlling," "Controlled by", and/or "under common Control with") the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Person, whether through the ownership of voting securities, by contract or otherwise, including specifically ownership of more than 50% of the General Partner interest in a limited partnership, or designation as a managing General Partner of a limited liability company.

(27) Cost Certification Procedures Manual--The manual produced, and amended from time to time, by the Department which sets forth procedures, forms, and guidelines for filing requests for IRS Form(s) 8609 for Developments placed in service under the Housing Tax Credit Program.

(28) Credit Period--With respect to a building within a Development, the period of ten taxable years beginning with the taxable year the building is placed in service or, at the election of the Development Owner, the succeeding taxable year, as more fully defined in the Code, §42(f)(1).

(29) Department--The Texas Department of Housing and Community Affairs, an agency of the State of Texas, established by Chapter 2306, Texas Government Code, including Department employees and/or the Board. (§2306.004)

(30) Determination Notice--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which states that the Development may be eligible to claim Housing Tax Credits without receiving an allocation of Housing Tax Credits from the State Housing Credit Ceiling because it satisfies the requirements of this QAP; sets forth conditions which must be met by the Development before the Department will issue the IRS Form(s) 8609 to the Development Owner; and specifies the Department's determination as to the amount of tax credits necessary for the financial feasibility of the Development and its viability as a rent restricted Development throughout the extended use period. (§42(m)(1)(D))

(31) Developer--Any Person entering into a contract with the Development Owner to provide development services with respect to the Development and receiving a fee for such services (which fee cannot exceed the limits identified in §50.9(d)(6)(B) of this chapter) and any other Person receiving any portion of such fee, whether by subcontract or otherwise.

(32) Development--A proposed qualified and/or approved low-income housing project, as defined by the Code, §42(g), for Adaptive Reuse, New Construction, reconstruction, or Rehabilitation, that consists of one or more buildings containing multiple Units, and that, if the Development shall consist of multiple buildings, is financed under a common plan and is owned by the same Person for federal tax purposes, and the buildings of which are either:

(A) Located on a single site or contiguous site; or

(B) Located on scattered sites and contain only rent-restricted units. (§2306.6702)

(33) Development Consultant--Any Person (with or without ownership interest in the Development) who provides professional services relating to the filing of an Application, Carryover Allocation Document, and/or cost certification documents.

(34) Development Funding--Means:

(A) a loan or grant; or

(B) an in-kind contribution, including a donation of real property, a fee waiver for a building permit or for water or sewer service, or a similar contribution that:

(i) provides an economic benefit; and

(ii) results in a quantifiable cost reduction for the applicable Development. (§2306.004(4-a))

(35) Development Owner--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department. (§2306.6702)

(36) Development Site--The area, or if scattered site areas, for which the Development is proposed to be located and is to be under control pursuant to §50.9(h)(7)(A) of this chapter.

(37) Development Team--All Persons or Affiliates thereof that play a role in the Development, construction, Rehabilitation, management and/or continuing operation of the subject Property, which will include any Development Consultant and Guarantor.

(38) Disaster Area--An area that has been declared as a disaster pursuant to §418.014 of Texas Government Code.

(39) Economically Distressed Area--Consistent with §17.921 of Texas Water Code, an Area in which:

(A) Water supply or sewer services are inadequate to meet minimal needs of residential users as defined by Texas Water Development Board rules;

(B) Financial resources are inadequate to provide water supply or sewer services that will satisfy those needs; and

(C) An established residential subdivision was located on June 1, 1989, as determined by the Texas Water Development Board.

(40) Eligible Basis--With respect to a building within a Development, the building's Eligible Basis as defined in the Code, §42(d).

(41) Executive Award and Review Advisory Committee ("The Committee")--A Departmental committee that will develop funding priorities and make funding and allocation recommendations to the Board based upon the evaluation of an Application in accordance with the housing priorities as set forth in Chapter 2306 of the Texas Government Code, and as set forth herein, and the ability of an Applicant to meet those priorities. (§2306.1112)

(42) Existing Residential Development--Any Development Site which contains 4 or more existing residential Units at the time the Volume I is submitted to the Department.

(43) Extended Housing Commitment--An agreement between the Department, the Development Owner and all successors in interest to the Development Owner concerning the extended housing use of buildings within the Development throughout the extended use period as provided in the Code, §42(h)(6). The Extended Housing Commitment with respect to a Development is expressed in the LURA applicable to the Development.

(44) General Contractor--One who contracts for the construction or Rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. This party may also be referred to as the "contractor."

(45) General Partner--That partner, or collective of partners, identified as the general partner of the partnership that is the Development Owner and that has general liability for the partnership. In addition, unless the context shall clearly indicate the contrary, if the Development Owner in question is a limited liability company, the term "General Partner" shall also mean the managing member or other party with management responsibility for the limited liability company.

(46) Governmental Entity--Includes federal or state agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts and other similar entities.

(47) Governmental Instrumentality--A legal entity such as a housing authority of a city or county, a housing finance corporation, or a municipal utility, which is created by a local political subdivision under statutory authority and which instrumentality is authorized to transact business for the political subdivision.

(48) Grant--Financial assistance that is awarded in the form of money to a housing sponsor or Development for a specific purpose and that is not required to be repaid. A Grant includes a forgivable loan. (§2306.004)

(49) Guarantor--Any Person that provides, or is anticipated to provide, a guaranty for the equity or debt financing for the Development.

(50) Historically Underutilized Businesses (HUB)--Any entity defined as a historically underutilized business with its principal place of business in the State of Texas in accordance with Chapter 2161, Texas Government Code.

(51) Housing Credit Agency--A Governmental Entity charged with the responsibility of allocating Housing Tax Credits pursuant to the Code, §42. For the purposes of this chapter, the Department is the sole "Housing Credit Agency" of the State of Texas.

(52) Housing Credit Allocation--An allocation by the Department to a Development Owner for a specific Application of Housing Tax Credits in accordance with the provisions of this chapter.

(53) Housing Credit Allocation Amount--With respect to a Development or a building within a Development, that amount the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the affordability period and which it allocates to the Development.

(54) Housing Tax Credit ("tax credits")--A tax credit allocated, or for which a Development may qualify, under the Housing Tax Credit Program, pursuant to the Code, §42. (§2306.6702)

(55) HUD--The United States Department of Housing and Urban Development, or its successor.

(56) Ineligible Building Types--Those Developments which are ineligible, pursuant to this QAP, for funding under the Housing Tax Credit Program, as follows:

(A) Hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities which are usually classified as transient housing (other than certain specific types of transitional housing for the homeless and single room occupancy units, as provided in the Code, §42(i)(3)(B)(iii) and (iv)) are not eligible. However, structures formerly used as hospitals, nursing homes or dormitories are eligible for Housing Tax Credits if the Development involves the conversion of the building to a non-transient multifamily residential Development. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living.

(B) Any Qualified Elderly Development or age restricted buildings in Intergenerational Housing Developments of two stories or more that does not include elevator service for any Units or living space above the first floor.

(C) Any Qualified Elderly Development or age restricted buildings in Intergenerational Housing Developments with any Units having more than two bedrooms with the exception of up to three employee Units reserved for the use of the manager,

maintenance, and/or security officer. These employee Units must be specifically designated as such.

(D) Any Development with building(s) with four or more stories that does not include an elevator.

(E) Any Qualified Elderly Development or age restricted buildings in Intergenerational Housing Developments proposing more than 70% two-bedroom Units.

(F) Any Development that violates the Integrated Housing Rule of the Department, §1.15 of this title.

(G) Any Development located in an Urban Area involving any New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings) of additional Units (other than a Qualified Elderly Development, a Development composed entirely of single family dwellings, and certain specific types of transitional housing for the homeless and single room occupancy units, as provided in the Code, §42(i)(3)(B)(iii) and (iv)) in which any of the designs in clauses (i) - (iv) of this subparagraph are proposed. For Applications involving a combination of single family detached dwellings and multifamily dwellings, the percentages in this subparagraph do not apply to the single family detached dwellings. For Intergenerational Housing Applications, the percentages in this subparagraph do not apply to buildings that are restricted by the age requirements of a Qualified Elderly Development. An Application may reflect a total of Units for a given bedroom size greater than the percentages in clauses (i) - (iv) of this subparagraph to the extent that the increase is only to reach the next highest number divisible by four.

(i) More than 30% of the total Units are one bedroom Units; or

(ii) More than 55% of the total Units are two bedroom Units; or

(iii) More than 40% of the total Units are three bedroom Units; or

(iv) More than 5% of the total Units in the Development with four or more bedrooms.

(H) Any Development that includes age restricted units that are not consistent with the Intergenerational Housing definition and policy or the definition of a Qualified Elderly Development.

(I) Any Development that contains residential Units either designated for a single occupational group, or through a preference for a single occupational group, violates the general public use requirement under Treasury Regulation §1.42-9.

(57) Intergenerational Housing--Housing that includes specific Units that are restricted to the age requirements of a Qualified Elderly Development and specific Units that are not age restricted in the same Development that:

(A) Have separate and specific buildings exclusively for the age restricted Units,

(B) Have separate and specific leasing offices and leasing personnel exclusively for the age restricted Units,

(C) Have separate and specific entrances, and other appropriate security measures for the age restricted Units,

(D) Provide shared social service programs that encourage intergenerational activities but also provide separate amenities for each age group,

(E) Share the same Development Site,

(F) Are developed and financed under a common plan and owned by the same Person for federal tax purposes; and

(G) Meet the requirements of the federal Fair Housing Act.

(58) IRS--The Internal Revenue Service, or its successor.

(59) Land Use Restriction Agreement (LURA)--An agreement between the Department and the Development Owner which is binding upon the Development Owner's successors in interest, that encumbers the Development with respect to the requirements of this chapter, Chapter 2306, Texas Government Code, and the requirements of the Code, §42. (§2306.6702)

(60) Local Political Subdivision--A county or municipality (city) in Texas. For purposes of §50.9(i)(5) of this chapter, a local political subdivision may act through a Government Instrumentality such as a housing authority, housing finance corporation, or municipal utility even if the Government Instrumentality's creating statute states that the entity is not itself a "political subdivision."

(61) Material Noncompliance--As defined in Chapter 60, Subchapter A of this title.

(62) Minority Owned Business--A business entity at least 51% of which is owned by members of a minority group or, in the case of a corporation, at least 51% of the shares of which are owned by members of a minority group, and that is managed and Controlled by members of a minority group in its daily operations. Minority group includes women, African Americans, American Indians, Asian Americans, and Mexican Americans and other Americans of Hispanic origin. (§2306.6734)

(63) Neighborhood Organization--An organization that is composed of persons living near one another within the organization's defined boundaries for the neighborhood and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood. A neighborhood organization includes a homeowners' association or a property owners' association. (§2306.001(23-a))

(64) New Construction--Any construction of a Development or a portion of a Development that does not meet the definition of Rehabilitation (which includes Reconstruction).

(65) ORCA--Office of Rural Community Affairs, as established by Chapter 487 of Texas Government Code.

(66) Person--Without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization or entity of any nature whatsoever and shall include any group of Persons acting in concert toward a common goal, including the individual members of the group.

(67) Persons with Disabilities--A person who:

(A) Has a physical, mental or emotional impairment that:

(i) Is expected to be of a long, continued and indefinite duration,

(ii) Substantially impedes his or her ability to live independently, and

(iii) Is of such a nature that the disability could be improved by more suitable housing conditions,

(B) Has a developmental disability, as defined in the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. §15002), or

(C) Has a disability, as defined in 24 CFR §5.403.

(68) Persons with Special Needs--Persons with alcohol and/or drug addictions, Colonia residents, Persons with Disabilities, victims of domestic violence, persons with HIV/AIDS, homeless populations and migrant farm workers.

(69) Pre-Application--A preliminary application, in a form prescribed by the Department, filed with the Department by an Applicant prior to submission of the Application, including any required exhibits or other supporting material, as more fully described in this title. (§2306.6704)

(70) Pre-Application Acceptance Period--That period of time during which Competitive Housing Tax Credit Pre-Applications for a Housing Credit Allocation from the State Housing Credit Ceiling may be submitted to the Department.

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

(A) Partnerships, Principals include all General Partners, Special Limited Partners and Principals with ownership interest;

(B) Corporations, Principals include any officer authorized by the board of directors to act on behalf of the corporation, including the president, vice president, secretary, treasurer and all other executive officers, and each stock holder having a 10% or more interest in the corporation; and

(C) Limited liability companies, Principals include all managing members, members having a 10% or more interest in the limited liability company or any officer authorized to act on behalf of the limited liability company.

(72) Property--The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built thereon in connection with the Application.

(73) Qualified Allocation Plan (QAP)--

(A) As defined in the Code, §42(m)(1)(B): Any plan which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions; which also gives preference in allocating housing credit dollar amounts among selected projects to projects serving the lowest-income tenants, projects obligated to serve qualified tenants for the longest periods, and projects which are located in qualified census tracts and the development of which contributes to a concerted community revitalization plan; and which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of the Code, §42 and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits.

(B) As defined in §2306.6702, Texas Government Code: A plan adopted by the board that provides the threshold, scoring, and underwriting criteria based on housing priorities of the Department that are appropriate to local conditions; provides a procedure for the Department, the Department's agent, or another private contractor of the Department to use in monitoring compliance with the qualified allocation plan and this subchapter; and consistent with §2306.6710(e), gives preference in Housing Tax Credit allocations to Developments that, as compared to the other Developments:

(i) When practicable and feasible based on documented, committed, and available third-party funding sources, serve the lowest-income tenants per Housing Tax Credit; and

(ii) Produce for the longest economically feasible period the greatest number of high quality units committed to remaining affordable to any tenants who are income-eligible under the low-income housing tax credit program.

(74) Qualified Basis--With respect to a building within a Development, the building's Eligible Basis multiplied by the Applicable Fraction, within the meaning of the Code, §42(c)(1).

(75) Qualified Census Tract--Any census tract which is so designated by the Secretary of HUD in accordance with the Code, §42(d)(5)(C)(ii).

(76) Qualified Elderly Development--A Development which meets the requirements of the federal Fair Housing Act and:

(A) Is intended for, and solely occupied by, individuals 62 years of age or older; or

(B) Is intended and operated for occupancy by at least one individual 55 years of age or older per Unit, where at least 80% of the total housing Units are occupied by at least one individual who is 55 years of age or older; and where the Development Owner publishes and adheres to policies and procedures which demonstrate an intent by the owner and manager to provide housing for individuals 55 years of age or older. (See 42 U.S.C. §3607(b))

(77) Qualified Market Analyst--A real estate appraiser certified or licensed by the Texas Appraiser Licensing and Certification Board, a real estate consultant, or other professional currently active in the subject property's market area who demonstrates competency, expertise, and the ability to render a high quality written report. The individual's performance, experience, and educational background will provide the general basis for determining competency as a Market Analyst. Competency will be determined by the Department, in its sole discretion. The Qualified Market Analyst must be a Third Party.

(78) Qualified Nonprofit Organization--An organization that is described in the Code, §501(c)(3) or (4), as these cited provisions may be amended from time to time, that is exempt from federal income taxation under the Code, §501(a), that is not affiliated with or Controlled by a for profit organization, and includes as one of its exempt purposes the fostering of low-income housing within the meaning of the Code, §42(h)(5)(C). A Qualified Nonprofit Organization may select to compete in one or more of the Set-Asides, including, but not limited to, the nonprofit Set-Aside, the At-Risk Development Set-Aside and the TRDO-USDA Allocation. (§2306.6729)

(79) Qualified Nonprofit Development--A Development in which a Qualified Nonprofit Organization (directly or through a partnership or wholly-owned subsidiary):

(A) Holds a controlling interest in the Development proposed to be financed from the nonprofit allocation pool (§2306.6729); and

(B) Owns an interest in the Development and materially participates (within the meaning of the Code, §469(h), as it may be amended from time to time) in its development and operation throughout the Compliance Period, and otherwise meets the requirements of the Code, §42(h)(5). (§2306.6729)

(80) Reference Manual--That certain manual, and any amendments thereto, produced by the Department which sets forth reference material pertaining to the Housing Tax Credit Program.

(81) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the reconstruction of a Development on the Development Site, but does not include Adaptive Reuse. Rehabilitation includes repairs necessary to correct the results of deferred maintenance, the replacement of principal fixtures and components, improvements to increase the efficient use of energy, and installation of security devices. Reconstruction, for these purposes, includes the demolition of one or more residential buildings in an Existing Residential Development and the re-construction of the Units on the Development Site. Developments proposing Adaptive Reuse or proposing to increase the total number of Units in the Existing Residential Development are not considered reconstruction.

(82) Related Party--As defined, (§2306.6702)

(A) The following individuals or entities:

(i) The brothers, sisters, spouse, ancestors, and descendants of a person within the third degree of consanguinity, as determined by Chapter 573, Texas Government Code;

(ii) A person and a corporation, if the person owns more than 50% of the outstanding stock of the corporation;

(iii) Two or more corporations that are connected through stock ownership with a common parent possessing more than 50% of:

(I) The total combined voting power of all classes of stock of each of the corporations that can vote;

(II) The total value of shares of all classes of stock of each of the corporations; or

(III) The total value of shares of all classes of stock of at least one of the corporations, excluding, in computing that voting power or value, stock owned directly by the other corporation;

(iv) A grantor and fiduciary of any trust;

(v) A fiduciary of one trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(vi) A fiduciary of a trust and a beneficiary of the trust;

(vii) A fiduciary of a trust and a corporation if more than 50% of the outstanding stock of the corporation is owned by or for:

(I) The trust; or

(II) A person who is a grantor of the trust.

(viii) A person or organization and an organization that is tax-exempt under the Code, §501(a), and that is controlled by that person or the person's family members or by that organization;

(ix) A corporation and a partnership or joint venture if the same persons own more than:

(I) 50% of the outstanding stock of the corporation; and

(II) 50% of the capital interest or the profits' interest in the partnership or joint venture.

(x) An S corporation and another S corporation if the same persons own more than 50% of the outstanding stock of each corporation;

(xi) An S corporation and a C corporation if the same persons own more than 50% of the outstanding stock of each corporation;

(xii) A partnership and a person or organization owning more than 50% of the capital interest or the profits' interest in that partnership; or

(xiii) Two partnerships, if the same person or organization owns more than 50% of the capital interests or profits' interests.

(B) Nothing in this definition is intended to constitute the Department's determination as to what relationship might cause entities to be considered "related" for various purposes under the Code.

(83) Rules--The Department's Housing Tax Credit Program Qualified Allocation Plan and Rules as presented in this title.

(84) Rural Area--An Area that is located:

(A) Outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

(B) Within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an Urban Area; or

(C) In an Area that is eligible for funding by Texas Rural Development Office or the United States Department of Agriculture (TRDO-USDA), other than an Area that is located in a municipality with a population of more than 50,000. (§2306.004)

(85) Rural Development--A Development or proposed Development that is located in a Rural Area, other than rural New Construction Developments with more than 80 Units.

(86) Selection Criteria--Criteria used to determine housing priorities of the State under the Housing Tax Credit Program as specifically defined in §50.9(i) of this chapter.

(87) Set-Aside--A reservation of a portion of the available Housing Tax Credits under the State Housing Credit Ceiling to provide financial support for specific types of housing or geographic locations or serve specific types of Applications or Applicants as permitted by the Qualified Allocation Plan on a priority basis. (§2306.6702)

(88) State Housing Credit Ceiling--The limitation on the aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with the Code, §42(h)(3)(C).

(89) Student Eligibility--Per the Code, §42(i)(3)(D), A Unit shall not fail to be treated as a low-income Unit merely because it is occupied:

(A) By an individual who is:

(i) A student and receiving assistance under Title IV of the Social Security Act (42 U.S.C. §§601 et seq.), or

(ii) Enrolled in a job training program receiving assistance under the Job Training Partnership Act (29 USCS §§1501 et seq., generally; for full classification, consult USCS Tables volumes) or under other similar Federal, State, or local laws, or

(B) Entirely by full-time students if such students are:

(i) Single parents and their children and such parents and children are not dependents (as defined by the Code §152) of another individual, or

(ii) Married and file a joint return.

(90) Tax-Exempt Bond Development--A Development requesting or having been awarded Housing Tax Credits and which receives a portion of its financing from the proceeds of tax-exempt bonds which are subject to the state volume cap as described in the Code, §42(h)(4), such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(91) Third Party--A Third Party is a Person who is not:

(A) An Applicant, General Partner, Developer, or General Contractor, or

(B) An Affiliate or a Related Party to the Applicant, General Partner, Developer or General Contractor, or

(C) Receiving any portion of the contractor fee or Developer fee.

(92) Threshold Criteria--Criteria used to determine whether the Development satisfies the minimum level of acceptability for consideration as specifically defined in §50.9(h) of this chapter. (§2306.6702)

(93) Total Housing Development Cost--The total of all costs incurred or to be incurred by the Development Owner in acquiring, constructing, rehabilitating and financing a Development, as determined by the Department based on the information contained in the Application. Such costs include reserves and any expenses attributable to commercial areas. Costs associated with the sale or use of Housing Tax Credits to raise equity capital shall also be included in the Total Housing Development Cost. Such costs include but are not limited to syndication and partnership organization costs and fees, filing fees, broker commissions, related attorney and accounting fees, appraisal, engineering, and the environmental site assessment.

(94) TRDO-USDA--Texas Rural Development Office (TRDO) of the United States Department of Agriculture (USDA) serving the State of Texas (also known as USDA Rural Development and formerly known as TxFmHA) or its successor.

(95) Unit--Any residential rental unit consisting of an accommodation including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking (such as a microwave), and sanitation. (§2306.6702) For purposes of completing the Rent Schedule for loft or studio type Units (which still must meet the definition of Bedroom), a Unit with 649 square feet or less is considered an efficiency Unit, a Unit with 650 to 899 square feet is considered not more than a one-bedroom Unit, a Unit with 900 to 999 square feet is considered not more than a two-bedroom Unit, a Unit with 1000 to 1199 square feet is considered not more than a three-bedroom Unit, and a Unit with 1200 square feet or more is considered a four bedroom Unit.

(96) Urban Area--The Area that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than an Area described in paragraph (84)(B) or eligible for funding as described in paragraph (84)(C) of this section.

§50.4. State Housing Credit Ceiling.

The Department shall determine the State Housing Credit Ceiling for each calendar year as provided in the Code, §42(h)(3)(C), using such information and guidance as may be made available by the Internal Revenue Service. The Department shall publish each such determination in the Texas Register within 30 days after the receipt of such information as is required for that purpose by the Internal Revenue Service. The aggregate amount of commitments of Housing Credit Allocations made by the Department during any calendar year shall not exceed the State Housing Credit Ceiling for such year as provided in the Code, §42. As permitted by the Code, §42(h)(4), Housing Credit Allocations made to Tax-Exempt Bond Developments are not included in the State Housing Credit Ceiling.

§50.5. Ineligibility; Disqualification and Debarment; Certain Applicant and Development Standards; Representation by Former Board Member or Other Person; Due Diligence, Sworn Affidavit; Appeals and Administrative Deficiencies for Ineligibility, Disqualification and Debarment.

(a) Ineligibility. An Application is ineligible if:

(1) The Applicant, Development Owner, Developer or Guarantor has been or is barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; or (§2306.6721(c)(2))

(2) The Applicant, Development Owner, Developer or Guarantor has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen years preceding the Application deadline; or

(3) The Applicant, Development Owner, Developer or Guarantor at the time of Application is: subject to an enforcement or disciplinary action under state or federal securities law or by the NASD; is subject to a federal tax lien; or is the subject of an enforcement proceeding with any Governmental Entity; or

(4) The Applicant, Development Owner, Developer or Guarantor with any past due audits has not submitted those past due audits to the Department in a satisfactory format. A Person is not eligible to receive a commitment of Housing Tax Credits from the Department if any audit finding or questioned or disallowed cost is unresolved as of June 1 of each year, or for Tax-Exempt Bond Developments or other Applications not applying for Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) no later than 30 days after Volume III of the Application is submitted; or

(5) (§2306.6703(a)(1)). At the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been:

(A) A member of the Board; or

(B) The Executive Director, a Deputy Executive Director, the Director of Multifamily Finance Production, the Director of Portfolio Management and Compliance, the Director of Real Estate Analysis, or a manager over Housing Tax Credits employed by the Department.

(6) (§2306.6703(a)(2)). The Applicant proposes to replace in less than 15 years any private activity bond financing of the Development described by the Application, unless:

(A) The Applicant proposes to maintain for a period of 30 years or more 100% of the Development Units supported by Housing Tax Credits as rent-restricted and exclusively for occupancy by individuals and families earning not more than 50% of the Area Median Gross Income, adjusted for family size; and

(B) At least one-third of all the units in the Development are public housing units or Section 8 Development-based units; or,

(7) The Development is located in a municipality or in a valid Extra Territorial Jurisdiction (ETJ) of a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins (or for Tax-Exempt Bond Developments at the time the reservation is made by the Texas Bond Review Board) unless the Applicant: (§2306.6703(a)(4))

(A) Has obtained prior approval of the Development from the governing body of the appropriate municipality or county containing the Development; and

(B) Has included in the Application a written statement of support from that governing body. This statement must reference this rule and authorize an allocation of Housing Tax Credits for the Development;

(C) For purposes of this paragraph, evidence under subparagraphs (A) and (B) of this paragraph must be received by the Department no later than April 1, 2008 (or for Tax-Exempt Bond Developments no later than 14 days before the Board meeting where the credits will be considered) and may not be more than one year old from the date the Volume 1 is submitted to the Department; or

(8) The Applicant proposes to construct a new Development proposing New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings) that is located one linear mile (measured by a straight line on a map) or less from a Development that: (§2306.6703(a)(3))

(A) Serves the same type of household as the new Development, regardless of whether the Development serves families, elderly individuals, or another type of household (Intergenerational Housing is not a type of household as it relates to this restriction); and

(B) Has received an allocation of Housing Tax Credits (including Tax-Exempt Bond Developments) for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Volume I is submitted); and

(C) Has not been withdrawn or terminated from the Housing Tax Credit Program.

(D) An Application is not ineligible under this paragraph if:

(i) The Development is using federal HOPE VI funds received through the United States Department of Housing and Urban Development; locally approved funds received from a public improvement district or a tax increment financing district; funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.); or funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.); or

(ii) The Development is located in a county with a population of less than one million; or

(iii) The Development is located outside of a metropolitan statistical area; or

(iv) The local government where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under subparagraphs (A) - (C) of this paragraph. For purposes of this clause, evidence of the local government vote or evidence required by this subparagraph must be received by the Department no later than April 1, 2008 (or for Tax-Exempt Bond Developments no later than 14 days before the Board meeting where the credits will be committed) and may not be more than one year old.

(E) In determining the age of an existing Development as it relates to the application of the three-year period, the Development will be considered from the date the Board took action on approving the allocation of tax credits. In dealing with ties between two or more Developments as it relates to this rule, refer to §50.9(j) of this chapter.

(9) A submitted Application has an entire Volume of the Application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review can not reasonably be performed by the Department, as determined by the Department. If an Application is determined ineligible pursuant to this section, the Application will be terminated without being processed as an Administrative Deficiency. To the extent that a review was able to be performed, specific reasons for the Department's determination of ineligibly will be included in the termination letter to the Applicant.

(b) Disqualification and Debarment. The Department will disqualify an Application, and/or debar a Person, if it is determined by the Department that any issues identified in the paragraphs of this subsection exist. The Department may debar a Person for one year from the date of debarment, or until the violation causing the debarment has been remedied, whichever term is longer, if the Department determines the facts warrant it. Causes for disqualification and debarment include: (§2306.6721)

(1) The provision of fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation in the Application or other information submitted to the Department at any stage of the evaluation or approval process; or

(2) The Applicant, Development Owner, Developer or Guarantor or anyone that has Controlling ownership interest in the Development Owner, Developer or Guarantor, or any Affiliate of such entities that is active in the ownership or Control of one or more other rent restricted rental housing properties in the state of Texas administered by the Department is in Material Noncompliance with the LURA (or any other document containing an Extended Housing Commitment) or the program rules in effect for such property as further described in Chapter 60 of this title on May 1, 2008 for Competitive Housing Tax Credit Applications or for Tax-Exempt Bond Development Applications or other Applications not applying for Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) no later than 30 days after Volume III of the Application is submitted (§2306.6721(c)(3)); or

(3) The Applicant, Development Owner, Developer, or any Guarantor, anyone that has Controlling ownership interest in the Development Owner, Developer or Guarantor, or any Affiliate of such entity that is active in the ownership or Control has been a Principal of any entity that failed to make all loan payments to the Department in accordance with the terms of the loan, as amended, or was otherwise in default with any provisions of any loans from the Department; or

(4) The Applicant or the Development Owner that is active in the ownership or Control of one or more tax credit properties in the state of Texas has failed to pay in full any fees or penalties within 30 days of when they were billed by the Department, as further described in §50.20 of this chapter; or

(5) An Applicant or a Related Party and any Person who is active in the construction, Rehabilitation, ownership, or Control of the

proposed Development, including a General Partner or contractor, and a Principal or Affiliate of a General Partner or contractor, or an individual employed as a consultant, lobbyist or attorney by an Applicant or a Related Party, communicates with any Board member during the period of time beginning on the date Applications are filed in an Application Round and ending on the date the Board makes a final decision with respect to the approval of any Application in that Application Round, unless the communication takes place at any board meeting or public hearing held with respect to that Application but not during a recess or other non-record portion of the meeting or hearing. Communication with Department staff must be in accordance with §50.9(b) of this chapter; violation of the communication restrictions of §50.9(b) is also a basis for disqualification and/or debarment. (§2306.1113)

(6) It is determined by the Department's General Counsel that there is evidence that establishes probable cause to believe that an Applicant, Development Owner, Developer, or any of their employees or agents has violated a state revolving door or other standard of conduct or conflict of interest statute, including §2306.6733, Texas Government Code, or a section of Chapter 572, Texas Government Code, in making, advancing, or supporting the Application.

(7) Applicants may be ineligible as further described in §50.5 of this chapter.

(8) The Applicant, Development Owner, Developer, Guarantor, or any Affiliate of such entity whose previous funding contracts or commitments have been partially or fully deobligated due to a failure to meet contractual obligations during the 12 months prior to the submission of the applications.

(9) The Applicant, Development Owner, Developer, Guarantor, or any Affiliate of such entity whose pre-development award from the Department has not been repaid for the Development at the time of Carryover Allocation or Bond closing.

(c) Certain Applicant and Development Standards. Notwithstanding any other provision of this section, the Department may not allocate tax credits to a Development proposed by an Applicant if the Department determines that: (§2306.223)

(1) The Development is not necessary to provide needed decent, safe, and sanitary housing at rental prices that individuals or families of low and very low-income or families of moderate income can afford;

(2) The Development Owner undertaking the proposed Development will not supply well-planned and well-designed housing for individuals or families of low and very low-income or families of moderate income;

(3) The Development Owner is not financially responsible;

(4) The Development Owner has contracted, or will contract for the proposed Development with, a Developer that:

(A) Is on the Department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development;

(B) Has breached a contract with a public agency and failed to cure that breach; or

(C) Misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Developer's participation in contracts with the agency and the amount of financial assistance awarded to the Developer by the agency;

(5) The financing of the housing Development is not a public purpose and will not provide a public benefit; and/or

(6) The Development will be undertaken outside the authority granted by this chapter to the Department and the Development Owner.

(d) Representation by Former Board Member or Other Person. (§2306.6733)

(1) A former Board member or a former executive director, deputy executive director, director of multifamily finance production, director of portfolio management and compliance, director of real estate analysis or manager over Housing Tax Credits previously employed by the Department may not:

(A) For compensation, represent an Applicant or one of its Related Parties for an allocation of tax credits before the second anniversary of the date that the Board member's, director's, or manager's service in office or employment with the Department ceased;

(B) Represent any Applicant or a Related Party of an Applicant or receive compensation for services rendered on behalf of any Applicant or Related Party regarding the consideration of an Application in which the former board member, director, or manager participated during the period of service in office or employment with the Department, either through personal involvement or because the matter was within the scope of the board member's, director's, or manager's official responsibility; or for compensation, communicate directly with a member of the legislative branch to influence legislation on behalf of an Applicant or Related Party before the second anniversary of the date that the board member's, director's, or manager's service in office or employment with the Department ceased.

(2) A Person commits a criminal offense if the Person violates §2306.6733. An offense under this section is a Class A misdemeanor.

(e) Due Diligence, Sworn Affidavit. In exercising due diligence in considering information of possible ineligibility, possible grounds for disqualification and debarment, Applicant and Development standards, possible improper representation or compensation, or similar matters, the Department may request a sworn affidavit or affidavits from the Applicant, Development Owner, Developer, Guarantor, or other Persons addressing the matter. If an affidavit determined to be sufficient by the Department is not received by the Department within seven business days of the date of the request by the Department, the Department may terminate the Application.

(f) Appeals and Administrative Deficiencies for Ineligibility, Disqualification and Debarment. An Applicant or Person found ineligible, disqualified, debarred or otherwise terminated under subsections (a) - (e) of this section will be notified in accordance with the Administrative Deficiency process described in §50.9(d)(4) of this chapter. They may also utilize the appeals process described in §50.17(b) of this chapter. (§2306.6721(d))

§50.6. Site and Development Restrictions: Floodplain; Ineligible Building Types; Scattered Site Limitations; Credit Amount; Limitations on the Size of Developments; Limitations on Rehabilitation Costs; Unacceptable Sites; Appeals and Administrative Deficiencies for Site and Development Restrictions.

(a) Floodplain. Any Development proposing New Construction or Reconstruction and located within the 100 year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site so that all finished ground floor elevations are at least one foot above the flood plain and parking and drive areas are no lower than six inches below the floodplain, subject to more stringent local requirements. If no FEMA Flood

Insurance Rate Maps are available for the proposed Development, flood zone documentation must be provided from the local government with jurisdiction identifying the 100 year floodplain. No buildings or roads that are part of a Development proposing Rehabilitation or Adaptive Reuse, with the exception of Developments with federal funding assistance from HUD or TX USDA-RHS, will be permitted in the 100 year floodplain unless they already meet the requirements established in this subsection for New Construction.

(b) Ineligible Building Types. Applications involving Ineligible Building Types as defined in §50.3(56) of this chapter will not be considered for allocation of tax credits.

(c) Scattered Site Limitations. Consistent with §50.3(32) of this chapter, a Development must be financed under a common plan, be owned by the same Person for federal tax purposes, and the buildings may be either located on a single site or contiguous site, or be located on scattered sites and contain only rent-restricted units. Tax-Exempt Bond Developments are permitted to be located on multiple sites consistent with Chapter 1372, Texas Government Code and as further clarified by the Texas Bond Review Board.

(d) Credit Amount. The Department shall issue tax credits only in the amount needed for the financial feasibility and viability of a Development throughout the affordability period. The issuance of tax credits or the determination of any allocation amount in no way represents or purports to warrant the feasibility or viability of the Development by the Department, or that the Development will qualify for and be able to claim Housing Tax Credits. The Department will limit the allocation of tax credits to no more than $1.2 million per Development, adjusted annually for CPI (consumer price index) and published once each year in the Application Reference Manual prior to the Application Round. The Department shall not allocate more than $2 million of tax credits in any given Application Round to any Applicant, Developer, Related Party or Guarantor; Competitive Housing Tax Credits approved by the Board during the 2008 calendar year, including commitments from the 2008 Credit Ceiling and forward commitments from the 2009 Credit Ceiling, are applied to the credit cap limitation for the 2008 Application Round. In order to evaluate this $2 million limitation, Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must provide the documentation required in the Application with regard to this requirement. In order to encourage the capacity enhancement of inexperienced Developers, the Department will prorate the credit amount allocated in situations where an Application is submitted in the either the Rural Regional Allocation or the Urban Regional Allocation. The Department will prorate the credits based on the percentage ownership, if there is an ownership interest, or the proportional percentage of the Developer fee received, if this applies to a Developer without an ownership interest. To be considered for this provision, a copy of a Joint Venture Agreement and narrative on how this builds the capacity of the inexperienced Developers is required. Tax-Exempt Bond Development Applications are not subject to these Housing Tax Credit limitations, and Tax-Exempt Bond Development Applications will not count towards the total limit on tax credits per Applicant. The limitation does not apply (§2306.6711(b)):

(1) To an entity which raises or provides equity for one or more Developments, solely with respect to its actions in raising or providing equity for such Developments (including syndication related activities as agent on behalf of investors);

(2) To the provision by an entity of "qualified commercial financing" within the meaning of the Code (without regard to the 80% limitation thereof);

(3) To a Qualified Nonprofit Organization or other not-for-profit entity, to the extent that the participation in a Development by such organization consists only of the provision of loan funds, grants or social services; and

(4) To a Development Consultant with respect to the provision of consulting services, provided the Development Consultant fee received for such services does not exceed 10% of the fee to be paid to the Developer (or 20% for Qualified Nonprofit Developments), or $150,000, whichever is greater.

(e) Limitations on the Size of Developments.

(1) The minimum Development size will be 16 Units if the Development involves Housing Tax Credits. The minimum Development size will be 4 Units if the funding source only involves the Housing Trust Fund or HOME Program.

(2) Rural Developments involving any New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings) will be limited to 80 Units (this includes individual Tax-Exempt Bond Developments). Rural Developments involving only Rehabilitation (excluding reconstruction) do not have a size limitation.

(3) Urban Developments involving any New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings), in the Competitive Housing Tax Credit Application Round will be limited to 252 total Units, wherein the maximum Department administered Units will be limited to 200 Units. Tax-Exempt Bond Developments will be limited to 252 restricted and total Units. These maximum Unit limitations also apply to those Developments which involve a combination of Rehabilitation, Reconstruction, and New Construction. Only Developments that consist solely of acquisition/Rehabilitation or Rehabilitation may exceed the maximum Unit restrictions.

(4) For Applications that are proposing an additional phase to an existing tax credit Development or that are otherwise adjacent to an existing tax credit Development, the combined Unit total for the existing and proposed Developments may not exceed the maximum allowable Development size set forth in this subsection unless:

(A) the first phase of the Development has been completed and has attained Sustaining Occupancy (as defined in §1.31 of this title) for at least six months; or

(B) a resolution from the governing body of the city or county in which the proposed Development is located, dated on or before the date the Application is submitted, is submitted with the Application. Such resolution must state that there is a need for additional Units and that the governing body has reviewed a market study, the conclusion of which supports the need for additional Units; or

(C) the proposed Development is intended to provide replacement of previously existing affordable Units on the Development Site or that were originally located within a one mile radius from the Development Site; provided, however, the combined number of Units in the proposed Development may not exceed the number of Units being replaced. Documentation of such replacement units must be provided.

(f) Limitations on the Location of Developments. Staff will only recommend, and the Board may only allocate, Housing Tax Credits from the State Housing Credit Ceiling to more than one Development from the State Housing Credit Ceiling in the same calendar year if the Developments are, or will be, located more than one linear mile apart as determined by the Department. If the Board forward commits credits from the following year's State Housing Credit Ceiling, the Development is considered to be in the calendar year in which the Board votes, not in the year of the State Housing Credit Ceiling. This limita-

tion applies only to communities contained within counties with populations exceeding one million (which for calendar year 2008 are Harris, Dallas, Tarrant and Bexar Counties). For purposes of this rule, any two sites not more than one linear mile apart are deemed to be "in a single community." (§2306.6711(f)). This restriction does not apply to the allocation of Housing Tax Credits to Developments financed through the Tax-Exempt Bond program, including the Tax-Exempt Bond Development Applications under review and existing Tax-Exempt Bond Developments in the Department's portfolio. (§2306.67021)

(g) Limitations of Development in Certain Census Tracts. Staff will not recommend and the Board will not allocate Housing Tax Credits for a Competitive Housing Tax Credit or Tax-Exempt Bond Development located in a census tract that has more than 30% Housing Tax Credit Units per total households in the census tract as established by the U.S. Census Bureau for the most recent Decennial Census unless the Applicant:

(1) In an Area whose population is less than 100,000;

(2) Proposes only reconstruction or Rehabilitation (excluding New Construction of non-residential buildings); or,

(3) Submits to the Department an approval of the Development referencing this rule in the form of a resolution from the governing body of the appropriate municipality or county containing the Development. For purposes of this paragraph, evidence of the local government approval must be received by the Department no later than April 1, 2008 for Competitive Housing Tax Credit Applications (or for Tax-Exempt Bond Development Applications no later than 14 days before the Board meeting where the credits will be committed). These ineligible census tracts are outlined in the 2008 Housing Tax Credit Site Demographic Characteristics Report.

(h) Limitations on Developments Proposing to Qualify for a 30% increase in Eligible Basis. Staff will only recommend a 30% increase in Eligible Basis:

(1) If the Development proposing to build in a Hurricane Rita Gulf Opportunity Zone (Rita GO Zone), which was designated as a Difficult to Develop Area as determined by H.B. 4440, is able to be placed in service by December 31, 2010 (or date as revised by the Internal Revenue Service) as certified in the Application; or,

(2) The Development is located in a Qualified Census Tract that has less than 40% Housing Tax Credit Units per households in the tract as established by the U.S. Census Bureau for the most recent Decennial Census. Developments located in a Qualified Census Tract that has in excess of 40% Housing Tax Credit Units per households in the tract are not eligible to qualify for a 30% increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to the Code, §42(d)(5)(C), unless the Development is proposing only Reconstruction or Rehabilitation (excluding New Construction of non-residential buildings). These ineligible Qualified Census Tracts are outlined in the 2008 Housing Tax Credit Site Demographic Characteristics Report.

(i) Rehabilitation Costs. Developments involving Rehabilitation must establish that the Rehabilitation will substantially improve the condition of the housing and will involve at least $12,000 per Unit in direct hard costs (including site work, contingency, contractor profit, overhead and general requirements) unless financed with TRDO-USDA in which case the minimum is $6,000.

(j) Unacceptable Sites. Developments will be ineligible if the Development is located on a site that is determined to be unacceptable by the Department.

(k) Appeals and Administrative Deficiencies for Site and Development Restrictions. An Application or Development found to be in violation under subsections (a) - (j) of this section will be notified in accordance with the Administrative Deficiency process described in §50.9(d)(4) of this chapter. They may also utilize the appeals process described in §50.17(b) of this chapter.

§50.7. Regional Allocation Formula; Set-Asides; Redistribution of Credits.

(a) Regional Allocation Formula. §2306.1115 as required by §2306.111(d), Texas Government Code, the Department uses a regional distribution formula developed by the Department and commented on by the public to distribute credits from the State Housing Credit Ceiling to all Urban Areas and Rural Areas. This formula establishes separate targeted tax credit amounts for Rural Areas and Urban Areas within each of the Uniform State Service Regions. Each Uniform State Service Region's targeted tax credit amount will be published on the Department's web site. The regional allocation for Rural Areas is referred to as the Rural Regional Allocation and the regional allocation for Urban Areas is referred to as the Urban Regional Allocation. Developments qualifying for the Rural Regional Allocation must meet the Rural Development definition. The Regional Allocation target will reflect that at least 20% of the State Housing Credit Ceiling for each calendar year shall be allocated to Developments in Rural Areas with a minimum of $500,000 for each Uniform State Service Region. (§2306.111(d)(3))

(b) Set-Asides. An Applicant may elect to compete in as many of the following Set-Asides for which the proposed Development qualifies (§2306.111(d)):

(1) At least 10% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of the Code, §42(h)(5). Qualified Nonprofit Organizations must have the Controlling interest in the Qualified Nonprofit Development applying for this Set-Aside. If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the controlling managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, a Qualified Nonprofit Development submitting an Application in the nonprofit Set-Aside must have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or a co-Developer as evidenced in the development agreement. (§2306.6729 and §2306.6706(b))

(2) At least 5% of the State Housing Credit Ceiling for each calendar year shall be allocated to Developments which are financed through TRDO-USDA, that meet the definition of a Rural Development, do not exceed 80 Units if proposing any New Construction (excluding New Construction of non-residential buildings), and have filed an "Intent to Request 2008 Housing Tax Credits" form by the Pre-Application submission deadline. (§2306.111(d)(2) If an Application in this Set-Aside involves Rehabilitation it will be attributed to, and come from the, At-Risk Development Set-Aside; if an Application in this Set-Aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region. Developments financed through TRDO-USDA's §538 Guaranteed Rural Rental Housing Program, in whole or in part, will not be considered under this Set-Aside. Any Rehabilitation or Reconstruction of an existing §515 Development that retains the §515 loan and restrictions will be considered under the At-Risk Development and TRDO-USDA Set-Asides, unless such Development is also financed through TRDO-USDA's §538 Guaranteed Rural Rental Housing Program. Commitments of 2008 Competitive Housing Tax Credits issued by the Board in 2008 will be applied to each Set-Aside, Rural

Regional Allocation, Urban Regional Allocation and/or TRDO-USDA Set-Aside for the 2008 Application Round as appropriate.

(3) At least 15% of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-Aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional formula required under subsection (a) of this section. Through this Set-Aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments designated as At-Risk Developments as defined in §50.3(14) of this chapter. (§2306.6714). To qualify as an At-Risk Development, the Applicant must provide evidence that it either is not eligible to renew, retain or preserve any portion of the financial benefit described in §50.3(14)(A) of this chapter, or provide evidence that it will renew, retain or preserve the financial benefit described in §50.3(14)(A) of this chapter; and must have filed an "Intent to Request 2008 Housing Tax Credits" form by the Pre-Application submission deadline. Up to 5% of the State Credit Ceiling associated with this Set-Aside may be given priority to Rehabilitation Developments funded with TRDO.

(c) Redistribution of Credits. (§2306.111(d)). If any amount of Housing Tax Credits remain after the initial commitment of Housing Tax Credits among the Set-Asides, Rural Regional Allocation and Urban Regional Allocation, the Department may redistribute the credits amongst the different regions and Set-Asides depending on the quality of Applications submitted as evaluated under the factors described in §50.9(d) of this chapter, the need to most closely achieve regional allocation goals and then the level of demand exhibited in the Uniform State Service Regions during the Application Round, except that, if there are any tax credits set aside for Developments in a Rural Area in a specific Uniform State Service Region that remain after the allocation under §50.9(d)(5)(C) of this chapter, those tax credits shall be made available in any other Rural Area in the state, first, and then to Developments in Urban areas of any uniform state service region. (§2306.111(d)(3)). As described in subsection (b)(1) and (2) of this section, no more than 90% of the State's Housing Credit Ceiling for the calendar year may go to Developments which are not Qualified Nonprofit Developments. If credits will be transferred from a Uniform State Service Region which does not have enough qualified Applications to meet its regional credit distribution amount, then those credits will be apportioned to the other Uniform State Service Regions.

§50.8. Pre-Applications for Competitive Housing Tax Credits: Submission; Communication with Departments Staff; Evaluation Process; Threshold Criteria and Review; Results. (§2306.6704)

(a) Pre-Application Submission. Any Applicant requesting a Housing Credit Allocation may submit a Pre-Application to the Department during the Pre-Application Acceptance Period along with the required Pre-Application Fee as described in §50.20 of this chapter. Only one Pre-Application may be submitted by an Applicant for each site under the State Housing Credit Ceiling. The Pre-Application submission is a voluntary process. While the Pre-Application Acceptance Period is open, Applicants may withdraw their Pre-Application and subsequently file a new Pre-Application utilizing the original Pre-Application Fee that was paid as long as no evaluation was performed by the Department. The Department is authorized though not required to request the Applicant to provide additional information it deems relevant to clarify information contained in the Pre-Application or to submit documentation for items it considers to be Administrative Deficiencies. The rejection of a Pre-Application shall not preclude an Applicant from submitting an Application with respect to a particular Development or site at the appropriate time.

(b) Communication with the Department. Applicants that submit a Pre-Application are restricted from communication with Department staff as provided in §50.9(b) of this chapter. (§2306.1113)

(c) Pre-Application Evaluation Process. Eligible Pre-Applications will be evaluated for Pre-Application Threshold Criteria. Applications that are associated with a TRDO-USDA Development are not exempt from Pre-Application and are eligible to compete for the Pre-Application points further outlined in §50.9(i)(14) of this chapter. Pre-Applications that are found to have Administrative Deficiencies will be handled in accordance with §50.9(d)(4) of this chapter. Department review at this stage is limited and not all issues of eligibility and threshold are reviewed at Pre-Application. Acceptance by staff of a Pre-Application does not ensure that an Applicant satisfies all Application eligibility, Threshold or documentation requirements. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or threshold deficiencies at the time of Pre-Application.

(d) Pre-Application Threshold Criteria and Review. Applicants submitting a Pre-Application will be required to submit information demonstrating their satisfaction of the Pre-Application Threshold Criteria. The Pre-Applications not meeting the Pre-Application Threshold Criteria will be terminated and the Applicant will receive a written notice to the effect that the Pre-Application Threshold Criteria have not been met. The Department shall not be responsible for the Applicant's failure to meet the Pre-Application Threshold Criteria and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Pre-Application Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. The Pre-Application Threshold Criteria include:

(1) Submission of a "Pre-Application Submission Form" and "Certification of Pre-Application Itemized Self-Score". The Applicant may not change the Self-Score unless requested by the Department in a Deficiency Notice;

(2) Evidence of property control through February 29, 2008 as evidenced by the documentation required under §50.9(h)(7)(A) of this chapter; and

(3) Evidence in the form of a certification that all of the notifications required under this paragraph have been made. Requests for Neighborhood Organizations under subparagraph (A) of this paragraph must be made by the deadlines described in that clause; notifications under subparagraph (C) of this paragraph must be made prior to the close of the Pre-Application Acceptance Period. (§2306.6704) Evidence of notification must meet the requirements identified in subparagraph (B) of this paragraph to all of the individuals and entities identified in subparagraph (B) of this paragraph. (§2306.6704)

(A) The Applicant must request a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site as follows:

(i) No later than December 7, 2007, the Applicant must e-mail, fax or mail with registered receipt a completed "Neighborhood Organization Request" letter as provided in the Pre-Application to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an Area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located an Area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected

officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format.

(ii) If no reply letter is received from the local elected officials by January 1, 2008, then the Applicant must certify to that fact in the "Pre-Application Notification Certification Form" provided in the Pre-Application.

(iii) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the local elected officials, or that the Applicant has knowledge of as of Pre-Application Submission in the "Pre-Application Notification Certification Form" provided in the Pre-Application.

(B) Not later than the date the Pre-Application is submitted, notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt return or similar tracking mechanism in the format required in the "Pre-Application Notification Template" provided in the Pre-Application. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are not required to notify city officials. Evidence of Notification is required in the form of a certification in the "Pre-Application Notification Certification Form" provided in the Pre-Application, although it is encouraged that Applicants retain proof of notifications in the event that the Department requires proof of Notification. Officials to be notified are those officials in office at the time the Pre-Application is submitted.

(i) Neighborhood Organizations on record with the city, state or county whose boundaries include the proposed Development Site as identified in subparagraph (A)(iii) of this paragraph;

(ii) Superintendent of the school district containing the Development;

(iii) Presiding officer of the board of trustees of the school district containing the Development;

(iv) Mayor of any municipality containing the Development;

(v) All elected members of the governing body of any municipality containing the Development;

(vi) Presiding officer of the governing body of the county containing the Development;

(vii) All elected members of the governing body of the county containing the Development;

(viii) State senator of the district containing the Development; and

(ix) State representative of the district containing the Development.

(C) Each such notice must include, at a minimum, all of the following:

(i) The Applicant's name, address, individual contact name and phone number;

(ii) The Development name, address, city and county;

(iii) A statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(iv) Statement of whether the Development proposes New Construction, reconstruction, Adaptive Reuse or Rehabilitation;

(v) The type of Development being proposed (single family homes, duplex, apartments, townhomes, high-rise etc.) and population being served (family, Intergenerational Housing, or elderly);

(vi) The approximate total number of Units and approximate total number of low-income Units;

(vii) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the approximate percentage of Units that are market rate;

(viii) The number of Units and proposed rents (less utility allowances) for the low-income Units and the number of Units and the proposed rents for any market rate Units. Rents to be provided are those that are effective at the time of the Pre-Application, which are subject to change as annual changes in the area median income occur; and

(ix) The expected completion date if credits are awarded.

(e) Pre-Application Results. Only Pre-Applications which have satisfied all of the Pre-Application Threshold Criteria requirements set forth in subsection (d) of this section and §50.9(i)(14) of this chapter, will be eligible for Pre-Application points. The order and scores of those Developments released on the Pre-Application Submission Log do not represent a commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the Pre-Application Submission Log. Inclusion of a Development on the Pre-Application Submission Log does not ensure that an Applicant will receive points for a Pre-Application.

§50.9. Application: Submission; Ex Parte Communications; Adherence to Obligations; Evaluation Process for Competitive Applications Under the State Housing Credit Ceiling; Evaluation Process for Tax-Exempt Bond Development Applications; Evaluation Process for Rural Rescue Applications Under the 2009 Credit Ceiling; Experience Pre-Certification Procedures; Threshold Criteria; Selection Criteria; Tiebreaker Factors; Staff Recommendations.

(a) Application Submission. Any Applicant requesting a Housing Credit Allocation or a Determination Notice must submit an Application, and the required Application fee as described in §50.20 of this chapter, to the Department during the Application Acceptance Period. Only complete Applications will be accepted. All required volumes must be appropriately bound as required by the Application Submission Procedures Manual and fully complete for submission with all required copies and received by the Department not later than 5:00 p.m. on the date the Application is due. A searchable electronic copy of all required volumes and exhibits, unless otherwise indicated in the Application Submission Procedures Manual, must be submitted in the format of a single file presented in the order they appear in the hard copy of the complete Application on a CD-R clearly labeled with the report type, Development name, and Development location is required for submission and must be received by the Department not later than 5:00 p.m. on the date the Application is due. Only one Application may be submitted for a site in an Application Round. While the Application Acceptance Period is open, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original Pre-Application Fee that was paid as long as no evaluation was performed by the Department. The Department is authorized, but not required, to request the Applicant to provide additional information it deems relevant to clarify information contained in the Application or to submit documentation for items it considers to be an Administrative Deficiency, including ineligibility criteria, site and development restrictions, and threshold and selection

criteria documentation. (§2306.6708) An Applicant may not change or supplement any part of an Application in any manner after the filing deadline, and may not add any Set-Asides, increase the requested credit amount, or revise the Unit mix (both income levels and bedroom mixes), except in response to a direct request from the Department to remedy an Administrative Deficiency as further described in §50.3(2) of this chapter or by amendment of an Application after a commitment or allocation of tax credits as further described in §50.17(d) of this chapter.

(b) Ex Parte Communications.

(1) During the period beginning on the first date of the Application Acceptance Period and ending on the date the Board makes a final decision with respect to the approval of any Application in that Application Round, a member of the Board may not communicate with the following Persons:

(A) an Applicant or Related Party; and

(B) any Person who is:

(i) active in the construction, rehabilitation, ownership, or Control of the proposed Development, including:

(I) a General Contractor; and

(II) a Developer; and

(III) a General Partner, Principal or Affiliate of a General Partner or General Contractor; or

(ii) employed as a consultant, lobbyist, or attorney by an Applicant or a Related Party.

(2) During the period beginning on the first date of the Application Acceptance Period and ending on the date the Board makes a final decision with respect to the approval of any Application in that Application Round, an employee of the Department may communicate about any Application with the following Persons:

(A) the Applicant or a Related Party; and

(B) any Person who is:

(i) active in the construction, rehabilitation, ownership, or Control of the proposed Development, including:

(I) a General Partner or General Contractor; and

(II) a Developer; and

(III) a Principal or Affiliate of a General Partner or General Contractor; or

(ii) employed as a consultant, lobbyist or attorney by the Applicant or a Related Party.

(3) A communication under paragraph (2) of this subsection may be oral or in any written form, including electronic communication through the Internet, and must satisfy the following conditions:

(A) the communication must be restricted to technical or administrative matters directly affecting the Application;

(B) the communication must occur or be received on the premises of the Department during established business hours; and

(C) a record of the communication must be maintained and included with the Application for purposes of Board review and must contain the following information:

(i) the date, time, and means of communication;

(ii) the names and position titles of the Persons involved in the communication and, if applicable, the Person's relationship to the Applicant;

(iii) the subject matter of the communication; and

(iv) a summary of any action taken as a result of the communication.

(4) Notwithstanding paragraphs (1) or (2) of this subsection, a Board member or Department employee may communicate without restriction with a Person listed in paragraphs (1) or (2) during any Board meeting or public hearing held with respect to the Application, but not during a recess or other non-record portion of the meeting or hearing.

(5) Paragraph (1) of this subsection does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may or will be present, provided that all matters related to Applications to be considered by the Board will not be discussed.

(c) Adherence to Obligations. (§2306.6720, General Appropriation Act, Article VII, Rider 8(a)). All representations, undertakings and commitments made by an Applicant in the Application process for a Development, whether with respect to Threshold Criteria, Selection Criteria or otherwise, shall be deemed to be a condition to any Commitment Notice, Determination Notice, or Carryover Allocation for such Development, the violation of which shall be cause for cancellation of such Commitment Notice, Determination Notice, or Carryover Allocation by the Department, and if concerning the ongoing features or operation of the Development, shall be enforceable even if not reflected in the LURA. All such representations are enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, as stated in the representations and in accordance with the LURA. If a Development Owner does not produce the Development as represented in the Application; does not receive approval for an amendment to the Application by the Department prior to implementation of such amendment; or does not provide the necessary evidence for any points received by the required deadline:

(1) The Development Owner must provide a plan to the Department, for approval and subsequent implementation, that incorporates additional amenities to compensate for the non-conforming components; and

(2) The Board will opt either to terminate the Application and rescind the Commitment Notice, Determination Notice or Carryover Allocation Agreement as applicable or the Department must:

(A) Reduce the score for Applications for Competitive Housing Tax Credits that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development by up to ten points for the two Application Rounds concurrent to, or following, the date that the non-conforming aspect, or lack of financing, was recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board.

(B) Prohibit eligibility to apply for Housing Tax Credits for a Tax-Exempt Bond Development that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development for up to 24 months from the date that the non-conforming aspect, or lack of financing, was recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board, less any time delay caused by the Department.

(C) In addition to, or in lieu of, the penalty in subparagraph (A) or (B) of this paragraph, the Board may assess a penalty fee of up to $1,000 per day for each violation.

(3) For amendments approved administratively by the Executive Director, the penalties in paragraph (2) of this subsection will not be imposed.

(d) Evaluation Process for Competitive Applications Under the State Housing Credit Ceiling. Applications submitted for competitive consideration under the State Housing Credit Ceiling will be reviewed according to the process outlined in this subsection. An Application, during any of these stages of review, may be determined to be ineligible as further described in §50.5 of this chapter; Applicants will be promptly notified in these instances.

(1) Set-Aside and Selection Criteria Review. All Applications will first be reviewed as described in this paragraph. Applications will be confirmed for eligibility for Set-Asides. Then, each Application will be preliminarily scored according to the Selection Criteria listed in subsection (i) of this section. When a particular scoring criterion involves multiple points, the Department will award points to the proportionate degree, in its determination, to which a proposed Development complied with that criterion. As necessary to complete this process only, Administrative Deficiencies may be issued to the Applicant. This process will generate a preliminary Department score for every Application.

(2) Application Review Assessment. Each Application will be assessed based on either the Applicant's self-score or the Department's preliminary score, region, and any Set-Asides that the Application indicates it is eligible for, consistent with paragraph (5) of this subsection. Those Applications that appear to be most competitive will be reviewed in detail for Eligibility and Threshold Criteria during the Application Round.

(3) Eligibility and Threshold Criteria Review. Applications that appear to be most competitive will be evaluated for eligibility under §50.5(a)(7) - (9), (b) - (f), and §50.6 of this chapter. The remaining portions of the Eligibility Review under §50.5 of this chapter will be performed in the Compliance Evaluation and Eligibility Review as described under paragraph (7) of this subsection. The most competitive Applications will also be evaluated against the Threshold Criteria under subsection (h) of this section. The same portions of the Threshold Criteria review may be performed in the Underwriting Evaluation and Criteria review for financial feasibility by the Department's Real Estate Analysis Division as described under paragraph (6) of this subsection. Applications not meeting Threshold Criteria will be notified of any Administrative Deficiencies, in each event the Applicant will be given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria after receipt and review of the Administrative Deficiency response will be terminated and the Applicant will be provided a written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. Not all Applications will be reviewed in detail for Threshold Criteria. To the extent that the review of Threshold Criteria documentation, or submission of Administrative Deficiency documentation, alters the score assigned to the Application, an Applicant will be notified of its final score.

(4) Administrative Deficiencies. If an Application contains Administrative Deficiencies pursuant to §50.3(2) of this chapter which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Selection, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made several times. The Department staff will request clarification or correction in a deficiency notice in the form of an email, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then for competitive Applications under the State Housing Credit Ceiling, five points shall be deducted from the Selection Criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not clarified or corrected by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. This Administrative Deficiency process applies to requests for information made by the Real Estate Analysis Division review.

(5) Subsequent Evaluation of Applications and Methodology for Award Recommendations to the Board. The Department will assign, as herein described, Developments for review for financial feasibility by the Department's Real Estate Analysis Division--in general these will be those Applications identified as most competitive and that meet the requirements of Eligibility and Threshold. This procedure will also be used in making recommendations to the Board as follows:

(A) Assignments will be determined by separately selecting the Applications with the highest scores in the At-Risk Set-Aside Statewide until the minimum requirements stated in §50.7(b) of this chapter are attained.

(B) Assignments will then be determined by selecting the Applications with the highest scores in the TRDO-USDA Allocation until the minimum requirements stated in §50.7(b) of this chapter are attained. If an Application in this Set-Aside involves Rehabilitation it will be attributed to, and come from the, At-Risk Set-Aside; if an Application in this Set-Aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region.

(C) Remaining funds within each Uniform State Service Region will then be selected based on the highest scoring Developments in each of the 26 sub-regions, regardless of Set-Aside, in accordance with the requirements under §50.7(a) of this chapter, without exceeding the credit amounts available for a Rural Regional Allocation and Urban Regional Allocation in each region. To the extent that Applications in the At-Risk and TRDO-USDA Set-Asides are not competitive enough within their respective Set-Asides, they will also be able to compete, with no Set-Aside preference, within their appropriate sub-region.

(D) If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region that remain after allocation under subparagraph (C) of this paragraph those tax credits shall then be made available in any other Rural Area in the state to the Application in the most underserved Rural sub-region as compared to the Region's Rural Allocation. (§2306.111(d)(3)). This will be referred to as the Rural collapse.

(E) If there are any tax credits remaining in any sub-region after the Rural collapse, in the Rural Regional Allocation or Urban

Regional Allocation, they then will be combined and made available to the Application in the most underserved sub-region as compared to the sub-region's allocation. This will be referred to as the statewide collapse.

(F) Staff will ensure that at least 10% of the State Housing Credit Ceiling is allocated to Qualified Nonprofit Organizations to satisfy the Nonprofit Set-Aside. If 10% is not met, then the Department will add the highest scoring Application by a Qualified Nonprofit Organization statewide until the 10% Nonprofit Set-Aside is met. Staff will ensure that at least 20% of the State Housing Credit Ceiling is allocated to Rural Developments. If this 20% minimum is not met, then the Department will add the highest scoring Rural Development Application statewide until the 20% Rural Development Set-Aside is met. Selection for each of the Set-Asides will take precedence over selection for the Rural Regional Allocation and Urban Regional Allocation. Funds for the Rural Regional Allocation or Urban Regional Allocation within a region, for which there are no eligible feasible Applications, will be redistributed as provided in §50.7(c) of this chapter, Redistribution of Credits. If the Department determines that an allocation recommendation would cause a violation of the $2 million limit described in §50.6(d) of this chapter, the Department will make its recommendation by selecting the Development(s) that most effectively satisfies(y) the Department's goals in meeting Set-Aside and regional allocation goals. Based on Application rankings, the Department shall continue to underwrite Applications until the Department has processed enough Applications satisfying the Department's underwriting criteria to enable the allocation of all available Housing Tax Credits according to regional allocation goals and Set-Aside categories. To enable the Board to establish a Waiting List, the Department shall underwrite as many additional Applications as necessary to ensure that all available Competitive Housing Tax Credits are allocated within the period required by law. (§2306.6710(a)-(f); §2306.111)

(6) Underwriting Evaluation and Criteria. The Department shall underwrite an Application to determine the financial feasibility of the Development and an appropriate level of Housing Tax Credits. In determining an appropriate level of Housing Tax Credits, the Department shall, at a minimum, evaluate the cost of the Development based on acceptable cost parameters as adjusted for inflation and as established by historical final cost certifications of all previous Housing Tax Credit allocations for the county in which the Development is to be located; if certifications are unavailable for the county, then the metropolitan statistical area in which the Development is to be located; or if certifications are unavailable under the county or the metropolitan statistical area, then the Uniform State Service Region in which the Development is to be located. Underwriting of a Development will include a determination by the Department, pursuant to the Code §42, that the amount of Housing Tax Credits recommended for commitment to a Development is necessary for the financial feasibility of the Development and its long-term viability as a qualified rent restricted housing property. In making this determination, the Department will use the Underwriting Rules and Guidelines, §1.32 of this title. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline, and may not add any set-asides, increase their credit amount, or revise their unit mix (both income levels and bedroom mixes), except in response to a direct request from the Real Estate Analysis Division to remedy an Administrative Deficiency as further described in §50.3(2) of this chapter or by amendment of an Application after a commitment or allocation of tax credits as further described in §50.17(d) of this chapter. To the extent that the review of Administrative Deficiency documentation during this review alters the score assigned to the Application, Applicants will be re-notified of their final score. Receipt of feasibility points under §50.9(i)(1) of this chapter does not ensure that an Application will be considered feasible during the feasibility evaluation by the Real Estate Analysis Division and conversely, a Development may be found feasible during the feasibility evaluation by the Real Estate Analysis Division even if it did not receive points under subsection (i)(1) of this section. (§2306.6710 and §2306.11)

(A) The Department may have an external party perform the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation.

(B) The Department will reduce the Applicant's estimate of Developer's and/or General Contractor fees in instances where these exceed the fee limits determined by the Department. In the instance where the General Contractor is an Affiliate of the Development Owner and both parties are claiming fees, General Contractor's overhead, profit, and general requirements, the Department shall be authorized to reduce the total fees estimated to a level that it determines to be reasonable under the circumstances. Further, the Department shall deny or reduce the amount of Housing Tax Credits allocated with respect to any portion of costs which it deems excessive or unreasonable. Excessive or unreasonable costs may include Developer fee attributable to Related Party acquisition costs. The Department also may require bids or Third Party estimates in support of the costs proposed by any Applicant. The Developer's fee limits will be calculated as follows:

(i) New construction pursuant to §42(b)(1)(A) U.S.C, the Developer fee cannot exceed 15% of the project's Total Eligible Basis, less Developer fees, or 20% of the project's Total Eligible Basis, less Developer fees if the Development proposes 49 total Units or less; and

(ii) Acquisition/rehabilitation Developments that are eligible for acquisition credits pursuant to §42(b)(1)(B) U.S.C, the acquisition portion of the Developer fee cannot exceed 15% of the existing structures acquisition basis, less Developer fee if the Development proposes 50 total Units or more, or 20% of the project's Total Eligible Basis, less Developer fees if the Development proposes 49 total Units or less, and will be limited to 4% credits. The rehabilitation portion of the Developer fee cannot exceed 15% of the total rehabilitation basis, less Developer fee if the Development proposes 50 total Units or more, or 20% of the project's Total Eligible Basis, less Developer fees if the Development proposes 49 total Units or less.

(7) Compliance Evaluation and Eligibility Review. After the Department has determined which Developments will be reviewed for financial feasibility, those same Developments will be reviewed for evaluation of the compliance status by the Department's Portfolio Management and Compliance Division, in accordance with Chapter 60 of this title, and will be evaluated in detail for eligibility under §50.5(a) - (f) of this chapter.

(8) Site Evaluation. Site conditions shall be evaluated through a physical site inspection by the Department or its assigns. Such inspection will evaluate the Development Site based upon the criteria set forth in the Site Evaluation form provided in the Application and the inspector shall provide a written report of such site evaluation. The evaluations shall be based on the condition of the surrounding neighborhood, including appropriate environmental and aesthetic conditions and proximity to retail, medical, recreational, and educational facilities, and employment centers. The site's appearance to prospective tenants and its accessibility via the existing transportation infrastructure and public transportation systems shall be considered. "Unacceptable" sites include, without limitation, those containing a non-mitigable environmental factor that may adversely affect the

health and safety of the residents. For Developments applying under the TRDO-USDA Set-Aside, the Department may rely on the physical site inspection performed by TRDO-USDA.

(e) Evaluation Process for Tax-Exempt Bond Development Applications. Applications submitted for consideration as Tax-Exempt Bond Developments will be reviewed according to the process outlined in this subsection. An Application, during any of these stages of review, may be determined to be ineligible as further described in §50.5 of this chapter; Applicants will be promptly notified in these instances.

(1) Eligibility and Threshold Criteria Review. All Tax-Exempt Bond Development Applications will first be reviewed as described in this paragraph. Tax-Exempt Bond Development Applications will be confirmed for eligibility under §50.5 and §50.6 of this chapter and Applications will be evaluated in detail against the Threshold Criteria. Tax-Exempt Bond Development Applications found to be ineligible and/or not meeting Threshold Criteria will be notified of any Administrative Deficiencies, in each event the Applicant will be given an opportunity to correct such deficiencies. Applications not meeting the Threshold Criteria after receipt and review of the Administrative Deficiency response will be terminated and the Applicant will be provided a written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled.

(2) Administrative Deficiencies. If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made several times. The Department staff will request clarification or correction in a deficiency notice in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. All Administrative Deficiencies shall be clarified or corrected to the satisfaction of the Department within five business days. Failure to resolve all outstanding deficiencies by 5:00 p.m. on the fifth business day following the date of the deficiency notice will result in a penalty fee of $500 for each business day the deficiency remains unresolved. Applications with unresolved deficiencies after 5:00 p.m. on the tenth day following the date of the deficiency notice will be terminated. The Applicant will be responsible for the payment of fees accrued pursuant to this section regardless of any termination pursuant to §50.5(b)(4) of this chapter. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. The Application will not be presented to the Board for consideration until all outstanding fees have been paid. This Administrative Deficiency process applies equally to the Real Estate Analysis Division review and feasibility evaluation and the same penalty and termination will be assessed.

(3) Underwriting and Compliance Evaluation and Criteria. The Department will assign all eligible Tax-Exempt Bond Development Applications meeting the eligibility and threshold requirements for review for financial feasibility by the Department's Real Estate Analysis Division, or the Department may have an external party perform the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation. The Department or external party shall underwrite an Application to determine the financial feasibility of the Development and an appropriate level of Housing Tax Credits as further described in subsection (d)(6) of this section. Tax-Exempt Bond Development Applications will also be reviewed for evaluation of the compliance status by the Department's Portfolio Management and Compliance Division in accordance with Chapter 60, Subchapter A of this title.

(4) Site Evaluation. Site conditions shall be evaluated through a physical site inspection by the Department or its assigns as further described in subsection (d)(8) of this section.

(f) Evaluation Process for Rural Rescue Applications Under the 2009 Credit Ceiling. Applications submitted for consideration as Rural Rescue Applications pursuant to §50.10(c) of this chapter under the 2009 Credit Ceiling will be reviewed according to the process outlined in this subsection. A Rural Rescue Application, during any of these stages of review, may be determined to be ineligible as further described in §50.5 of this chapter; Applicants will be promptly notified in these instances.

(1) Procedures for Intake and Review.

(A) Applications for Rural Rescue deals may be submitted between March 2, 2008 and November 15, 2008 and must be submitted in accordance with §50.21 of this chapter. A complete Application must be submitted at least 40 days prior to the date of the Board meeting at which the Applicant would like the Board to act on the proposed Development. Applications must include the full Application Fee as further described in §50.20(c) of this chapter. Applicants must submit documents in accordance with the procedures set out in the 2008 Application Submission Procedures Manual for Volumes I, II, III and IV. Volume IV, evidencing Selection Criteria, MUST be submitted.

(B) Applicants do not need to participate in the Pre-Application process outlined in §50.8 of this chapter, nor will they need to submit pre-certification documents identified in subsection (g) of this section.

(C) Applications will be processed on a first-come, first-served basis. Applications unable to meet all deficiency and underwriting requirements within 30 days of the request by the Department, will remain under consideration, but will lose their submission status and the next Application in line will be moved ahead in order to expedite those Applications most able to proceed. Applications for Rural Rescue will be processed and evaluated as described in this paragraph. Applications will be reviewed to ensure that the Application is eligible as a rural "rescue" Development as described in paragraph (2) of this subsection.

(D) Prior to the Development being recommended to the Board, TRDO-USDA must provide the Department with a copy of the physical site inspection report performed by TRDO-USDA, as provided in subsection (d)(8) of this section.

(2) Eligibility Review. All Rural Rescue Applications will first be reviewed as described in this paragraph and eligibility will be confirmed pursuant to §50.5 and §50.6 of this chapter and the criteria listed in subparagraphs (A) - (C) of this paragraph. Applications found to be ineligible will be notified.

(A) Applications must be funded through TRDO-USDA;

(B) Applications must able to provide evidence that the loan:

(i) has been foreclosed and is in the TRDO-USDA inventory; or

(ii) is being foreclosed; or

(iii) is being accelerated; or

(iv) is in imminent danger of foreclosure or acceleration; or

(v) is for an Application in which two adjacent parcels are involved, of which at least one parcel qualifies under clauses (i) - (iv) of this subparagraph and for which the Application is submitted under one ownership structure, one financing plan an for which there are no market rate units; and

(C) Applicants must be identified as in compliance with TRDO-USDA regulations.

(3) Threshold Review. Applications will be evaluated in detail against the Threshold Criteria. Applications found to be ineligible and/or not meeting Threshold Criteria will be notified of any Administrative Deficiencies, in which event the Applicant is given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria after receipt and review of the Administrative Deficiency response will be terminated and the Applicant will be provided a written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. Not all Applications will be reviewed in detail for Threshold Criteria.

(4) Selection Criteria Review. All Rural Rescue Applications will be evaluated against the Selection Criteria and a score will be assigned to the Application. The minimum score for Selection Criteria is not required to be achieved to be eligible.

(5) Administrative Deficiencies. If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies as further described in subsection (d)(4) of this section.

(6) Underwriting and Compliance Evaluation and Criteria. The Department will assign all eligible Rural Rescue Applications meeting the eligibility and threshold requirements for review for financial feasibility by the Department's Real Estate Analysis Division, or the Department may have an external party perform the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation. The Department or external party shall underwrite an Application to determine the financial feasibility of the Development and an appropriate level of Housing Tax Credits as further described in subsection (d)(6) of this section. Rural Rescue Development Applications will also be reviewed for evaluation of the previous participation by the Department's Portfolio Management and Compliance Division in accordance with Chapter 60 of this title.

(7) Site Evaluation. Site conditions shall be evaluated through a physical site inspection by the Department or its assigns as further described in subsection (d)(8) of this section.

(8) Credit Ceiling and Applicability of this Chapter. All Rural Rescue Applicants will receive their credit allocation out of the 2009 Credit Ceiling and therefore, will be required to follow the rules and guidelines identified in the 2009 Qualified Allocation Plan and Rules (QAP). However, because the 2009 QAP will not be in effect during the time period that the Rural Rescue Applications can be submitted, Applications submitted and eligible under the Rural Rescue Set-Aside will be considered by the Board to have satisfied the requirements of the 2009 QAP and are waived from 2009 QAP requirements that are changes from the 2008 QAP, to the extent permitted by statute.

(9) Procedures for Recommendation to the Board. Consistent with subsection (k) of this section, staff will make its recommendation to the Committee. The Committee will make commitment recommendations to the Board. Staff will provide the Board with a written, documented recommendation which will address at a minimum the financial and programmatic viability of each Application and a breakdown of which Selection Criteria were met by the Applicant. The Board will make its decision based on §50.10(a) of this chapter. Any award made to a Rural Rescue Development will be credited against the TRDO-USDA Set-Aside for the 2009 Application Round, as required under subsection (d)(5) of this section.

(10) Limitation on Allocation. No more than $350,000 in credits will be forward committed from the 2009 State Housing Credit Ceiling. To the extent Applications are received that exceed the maximum limitation, staff will prepare the award for Board consideration noting for the Board that the award would require a waiver of this limitation.

(g) Experience Pre-Certification Procedures. No later than 14 days prior to the close of the Application Acceptance Period for Competitive Housing Tax Credit Applications, an Applicant must submit the documents required in this subsection to obtain the required pre-certification. For Applications submitted for Tax-Exempt Bond Applications or Applications not applying for Competitive Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) all of the documents in this section must be submitted with the Application. Upon receipt of the evidence required under this section, a certification from the Department will be provided to the Applicant for inclusion in its Application(s). Evidence must show that one of the Development Owner's General Partners, the Developer or their Principals have a record of successfully constructing or developing residential units (single family or multifamily) in the capacity of owner, General Partner or Developer. If a Public Housing Authority organized an entity for the purpose of developing residential units the Public Housing Authority shall be considered a Principal for the purpose of this requirement. If the individual requesting the certification was not the Development Owner, General Partner or Developer, but was the individual within one of those entities doing the work associated with the development of the Units (responsibility for work associated with the development of Units includes, but is not limited to, application submission, third-party engagement, post award activities, construction, cost certification, etc.), the individual must show that the units were successfully developed as required in paragraphs (1) and (2) of this subsection, and also provide written confirmation from the entity involved stating that the individual was the person responsible for the development. If rehabilitation experience is being claimed to qualify for an Application involving New Construction, then the rehabilitation must have been substantial and involved at least $12,000 of direct hard cost per unit.

(1) The term "successfully" is defined as acting in a capacity as the owner, General Partner, or Developer of:

(A) At least 100 residential units or, if less than 100 residential units, 80% of the total number of Units the Applicant is applying to build (e.g. you must have 40 units successfully built to apply for 50 Units); or

(B) At least 36 residential units if the Development is a Rural Development; or

(C) At least 25 residential units if the Development has 36 or fewer total Units.

(2) One or more of the following documents must be submitted: American Institute of Architects (AIA) Document A111 - Standard Form of Agreement Between Owner & Contractor, AIA Document G704 - Certificate of Substantial Completion, IRS Form 8609, HUD Form 9822, development agreements, partnership agreements, or other documentation satisfactory to the Department verifying that the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals have the required experience. If submitting the IRS Form 8609, only one form per Development is required. The evidence must clearly indicate:

(A) That the Development has been completed (i.e. Development Agreements, Partnership Agreements, etc. must be accompanied by certificates of completion);

(B) That the names on the forms and agreements tie back to the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals as listed in the Application; and

(C) The number of units completed or substantially completed.

(h) Threshold Criteria. The following Threshold Criteria listed in this subsection are mandatory requirements that must be submitted at the time of Application submission unless specifically indicated otherwise:

(1) Completion and submission of the Application, which includes the entire Uniform Application and any other supplemental forms which may be required by the Department. (§2306.1111)

(2) Completion and submission of the Site Packet as provided in the Application.

(3) Set-Aside Eligibility. Documentation must be provided that confirms eligibility for all Set-Asides under which the Application is seeking funding as required in the Application.

(4) Certifications. The "Certification Form" provided in the Application confirming the following items:

(A) A certification of the basic amenities selected for the Development. All Developments must meet at least the minimum threshold of points. These points are not associated with the selection criteria points in subsection (i) of this section. The amenities selected must be made available for the benefit of all tenants. If fees in addition to rent are charged for amenities reserved for an individual tenant's use, then the amenity may not be included among those provided to satisfy this requirement. Developments must provide a minimum number of common amenities in relation to the Development size being proposed. The amenities selected must be selected from clause (ii) of this subparagraph and made available for the benefit of all tenants. Developments proposing Rehabilitation (excluding Reconstruction) or proposing Single Room Occupancy will receive 1.5 points for each point item. Applications for non-contiguous scattered site housing, including New Construction, reconstruction, Adaptive Reuse Rehabilitation, and single-family design, will have the threshold test applied based on the number of Units per individual site, and must submit a separate certification for each individual site under control by the Applicant. Any future changes in these amenities, or substitution of these amenities, must be approved by the Department in accordance with §50.17(d) of this chapter and may result in a decrease in awarded credits if the substitution or change includes a decrease in cost, or in the cancellation of a Commitment Notice or Carryover Allocation if all of the Common Amenities claimed are no longer met.

(i) Applications must meet a minimum threshold of points (based on the total number of Units in the Development) as follows:

(I) Total Units are less than 13, 0 points are required to meet Threshold for Single Room Occupancy and 1 point is required to meet threshold for all other Developments;

(II) Total Units are between 13 and 24, 1 point is required to meet Threshold;

(III) Total Units are between 25 and 40, 3 points are required to meet Threshold;

(IV) Total Units are between 41 and 76, 6 points are required to meet Threshold;

(V) Total Units are between 77 and 99, 9 points are required to meet Threshold;

(VI) Total Units are between 100 and 149, 12 points are required to meet Threshold;

(VII) Total Units are between 150 and 199, 15 points are required to meet Threshold;

(VIII) Total Units are 200 or more, 18 points are required to meet Threshold.

(ii) Amenities for selection include those items listed in subclauses (I) - (XXVI) of this clause. Both Developments designed for families and Qualified Elderly Developments can earn points for providing each identified amenity unless the item is specifically restricted to one type of Development. All amenities must meet accessibility standards as further described in subparagraphs (D) and (F) of this paragraph. An Application can only count an amenity once, therefore combined functions (a library which is part of a community room) only count under one category. Spaces for activities must be sized appropriately to serve the anticipated population.

(I) Full perimeter fencing (2 points);

(II) Controlled gate access (1 point);

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

(IV) Accessible walking/jogging path separate from a sidewalk (1 point);

(V) Community laundry room with at least one front loading washer (1 point);

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

(VII) Covered pavilion that includes barbecue grills and tables (2 points);

(VIII) Swimming pool (3 points);

(IX) Furnished fitness center equipped with a minimum of two of the following fitness equipment options with at least one option per every 40 Units or partial increment of 40 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, sauna, stair climber, etc. The maximum number of equipment options required for any Development, regardless of number of Units, shall be five (2 points);

(X) Equipped and functioning business center or equipped computer learning center with 1 computer for every 30 Units

proposed in the Application, 1 printer for every 3 computers (with minimum of one printer), and 1 fax machine (2 points);

(XI) Furnished Community room (1 point);

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

(XIII) Enclosed sun porch or covered community porch/patio (2 points);

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

(XV) Senior Activity Room (Arts and Crafts, etc.) (2 points);

(XVI) Health Screening Room (1 point);

(XVII) Secured Entry (elevator buildings only) (1 point);

(XVIII) Horseshoe pit, putting green or shuffleboard court (1 point);

(XIX) Community Dining Room w/full or warming kitchen (3 points);

(XX) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot (1 Point);

(XXI) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (2 points);

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

(XXIII) Furnished and staffed Children's Activity Center (3 points);

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

(XXV) Green Building (for example, evaporative coolers, passive solar heating/cooling, water conserving fixtures, collected water (at least 50%) for irrigation purposes, sub-metered electric meters, exceed Energy Star standards, photovoltaic panels for electricity and design and wiring for the use of such panels, construction waste management, provide recycle service, water permeable walkways and parking areas, or other Department approved items). (3 points); or

(XXVI) Hot Tub/Jacuzzi Spa (1 point).

(B) A certification that the Development will have all of the following Amenities at no charge to the tenants. All New Construction or Reconstruction Units must provide the amenities in clauses (i) - (ix) of this subparagraph. Rehabilitation (excluding Reconstruction) and Adaptive Reuse must provide the amenities in clauses (ii) - (ix) of this subparagraph unless expressly identified as not required. (§2306.187)

(i) All New Construction Units must be wired with 6 pair CAT5e wiring or better to provide phone and data service to each unit and wired with COAX cable to provide TV and high speed internet data service to each unit;

(ii) Blinds or window coverings for all windows;

(iii) Disposal and Energy-Star or equivalently rated dishwasher (not required for TRDO-USDA or SRO Developments);

(iv) Energy-Star or equivalently rated (not required for SRO Developments) Refrigerator;

(v) Energy-Star or equivalently rated Oven/Range (not required for SRO Developments);

(vi) Exhaust/vent fans in bathrooms;

(vii) Energy-Star or equivalently rated ceiling fans in living areas and bedrooms;

(viii) Energy-Star or equivalently rated lighting in all Units;

(ix) Emergency 911 or public telephone accessible and available to tenants 24 hours a day.

(C) A certification that the Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or if no local building codes are in place then to the most recent version of the International Building Code.

(D) A certification that the Applicant is in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), and the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, the Code Requirements for Housing Accessibility 2000 (or as amended from time to time) produced by the International Code Council and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))

(E) A certification that the Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses, and that the Applicant will submit a report at least once in each 90-day period following the date of the Commitment Notice until the Cost Certification is submitted, in a format prescribed by the Department and provided at the time a Commitment Notice is received, on the percentage of businesses with which the Applicant has contracted that qualify as Minority Owned Businesses. (§2306.6734)

(F) Pursuant to §2306.6722, any Development supported with a Housing Tax Credit allocation shall comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C. The Applicant must provide a certification from the Development engineer, an accredited architect or Department-approved third party accessibility specialist, that the Development will comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C and this subparagraph. (§2306.6722 and §2306.6730)

(G) For Developments involving New Construction (excluding New Construction of non-residential buildings) where some Units are two-stories or single family design and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A similar certification will also be required after the Development is completed from an inspector, architect, or accessibility specialist.

(H) A certification that the Development will be equipped with energy saving devices that meet the standard statewide energy code adopted by the state energy conservation office, unless historic preservation codes permit otherwise for a Development involving historic preservation. All Units must be air-conditioned. The measures must be certified by the Development architect as being included in the design of each tax credit Unit at the time the 10% Test Documentation is submitted and in actual construction upon Cost Certification. (§2306.6725(b)(1))

(I) A certification that the Development will be built by a General Contractor that satisfies the requirements of the General Appropriation Act, Article VII, Rider 8(c) applicable to the Department which requires that the General Contractor hired by the Development Owner or the Applicant, if the Applicant serves as General Contractor, must demonstrate a history of constructing similar types of housing without the use of federal tax credits.

(J) A certification that the Development Owner agrees to establish a reserve account consistent with §2306.186 Texas Government Code and as further described in §1.37 of this title.

(K) A certification that the Applicant, Developer, or any employee or agent of the Applicant has not formed a Neighborhood Organization for purposes of subsection (i)(2) of this section, has not given money or a gift to cause the Neighborhood Organization to take its position of support or opposition, nor has provided any assistance to a Neighborhood Organization to meet the requirements under subsection (i)(2) of this section which are not allowed under that subsection, as it relates to the Applicant's Application or any other Application under consideration in 2008.

(L) Operate in accordance with the requirements pertaining to rental assistance in Chapter 60 of this title.

(M) A certification that the Development Owner will contract with a Management Company throughout the Compliance Period that will perform criminal background checks on all adult tenants, head and co head of households.

(5) Design Items. This exhibit will provide:

(A) All of the architectural drawings identified in clauses (i) - (iii) of this subparagraph. While full size design or construction documents are not required, the drawings must have an accurate and legible scale and show the dimensions. All Developments involving New Construction, or conversion of existing buildings not configured in the Unit pattern proposed in the Application, must provide all of the items identified in clauses (i) - (iii) of this subparagraph. For Developments involving Rehabilitation for which the Unit configurations are not being altered, only the items identified in clauses (i) and (iii) of this subparagraph are required:

(i) A site plan which:

(I) Is consistent with the number of Units and Unit mix specified in the "Rent Schedule" provided in the Application;

(II) Identifies all residential and common buildings and amenities; and

(III) Clearly delineates the flood plain boundary lines and all easements shown in the site survey;

(ii) Floor plans and elevations for each type of residential building and each common area building clearly depicting the height of each floor and a percentage estimate of the exterior composition. Adaptive Reuse Developments, are only required to provide building plans delineating each unit by number, type and area consistent with those in the "Rent Schedule" and pictures of each elevation of the existing building depicting the height of each floor and percentage estimate of the exterior composition; and

(iii) Unit floor plans for each type of Unit showing special accessibility and energy features. The net rentable areas these Unit floor plans represent should be consistent with those shown in the "Rent Schedule" provided in the Application. Adaptive Reuse Developments, are only required to provide Unit floor plans for each distinct typical Unit type (i.e. one-bedroom, two-bedroom) and for all Units types that vary in area by 10% from the typical Unit; and

(B) A boundary survey of the proposed Development Site and of the property to be purchased. In cases where more property is purchased than the proposed Development Site, the survey or plat must show the survey calls for both the larger site and the Development Site. The survey does not have to be recent; but it must show the property purchased and the property proposed for the Development Site. In cases where the Development Site is only a part of the site being purchased, the depiction or drawing of the Development Site may be professionally compiled and drawn by an architect, engineer or surveyor.

(6) Evidence of the Development's development costs and corresponding credit request and syndication information as described in subparagraphs (A) - (G) of this paragraph.

(A) A written narrative describing the financing plan for the Development, including any non-traditional financing arrangements; the use of funds with respect to the Development; the funding sources for the Development including construction, permanent and bridge loans, rents, operating subsidies, and replacement reserves; and the commitment status of the funding sources for the Development. This information must be consistent with the information provided throughout the Application. (§2306.6705(1))

(B) All Developments must submit the "Development Cost Schedule" provided in the Application. This exhibit must have been prepared and executed not more than 6 months prior to the close of the Application Acceptance Period.

(C) Provide a letter of commitment from a syndicator that, at a minimum, provides an estimate of the amount of equity dollars expected to be raised for the Development in conjunction with the amount of Housing Tax Credits requested for allocation to the Development Owner, including pay-in schedules, syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis. (§2306.6705(2) and (3))

(D) For Developments located in a Qualified Census Tract (QCT) as determined by the Secretary of HUD and qualifying for a 30% increase in Eligible Basis, pursuant to the Code, §42(d)(5)(C), if permitted under §50.6(h) of this chapter, Applicants must submit a copy of the census map clearly showing that the proposed Development is located within a QCT. Census tract numbers must be clearly marked on the map, and must be identical to the QCT number stated in the Department's Reference Manual.

(E) Rehabilitation Developments must submit a Property Condition Assessment meeting the requirements of paragraph (14)(C) of this subsection.

(F) If offsite costs are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the supplemental form "Off Site Cost Breakdown" must be provided.

(G) If projected site work costs include unusual or extraordinary items or exceed $9,000 per Unit, then the Applicant must provide a detailed cost breakdown prepared by a Third Party engineer

or architect, and a letter from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis and which ones may be ineligible.

(7) Evidence of readiness to proceed as evidenced by at least one of the items under each of subparagraphs (A) - (D) of this paragraph:

(A) Evidence of Property control in the name of the Development Owner. If the evidence is not in the name of the Development Owner, then the documentation should reflect an expressed ability to transfer the rights to the Development Owner. All of the sellers of the proposed Property for the 36 months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development team must be identified at the time of Application (not required at Pre-Application). One of the following items described in clauses (i) - (iii) of this subparagraph must be provided, and if the acquisition can be characterized as an identity of interest transaction as described in §1.32 of this title, items described in clause (iv) of this subparagraph must also be provided:

(i) A recorded warranty deed with corresponding executed settlement statement, unless required to submit items under clause (iv) of this subparagraph; or

(ii) A contract for lease (the minimum term of the lease must be at least 45 years) which is valid for the entire period the Development is under consideration for tax credits; or

(iii) A contract for sale, or an exclusive option to purchase or lease which is valid for the entire period the Development is under consideration for tax credits. For Tax Exempt Bond Development Applications, site control must be valid through December 1, 2007 with option to extend through March 1, 2008 (Applications submitted for lottery) or 90 days from the date of the bond reservation with the option to extend through the scheduled TDHCA Board meeting at which the award of Housing Tax Credits will be considered. The potential expiration of site control does not warrant the Application being presented to the TDHCA Board prior to the scheduled meeting.

(iv) If the acquisition can be characterized as an identity of interest transaction as described in §1.32 of this title, subclauses (I), (II) and (III) of this clause will be required (not required at Pre-Application):

(I) Documentation of the original acquisition cost in the form of a settlement statement or, if a settlement statement is not available, the seller's most recent audited financial statement indicating the asset value for the Development Site, and

(II) If the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost claimed in the Application,

(-a-) An appraisal meeting the requirements of paragraph (14)(D) of this subsection, and

(-b-) Any other verifiable costs of owning, holding, or improving the Property 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, a calculated return on equity at a rate consistent with the historical returns of similar risks, the cost of any physical improvements made to the property, the cost of rezoning, replatting or developing the property, or any costs to provide or improve access to the property.

(-2-) For transactions which include existing buildings that will be rehabilitated or otherwise maintained 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, a calculated return on equity at a rate consistent with the historical returns of similar risks, and allow 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.

(III) In no instance will the acquisition cost utilized by the underwriter exceed the lesser of the original acquisition cost evidenced by subclause (I) of this clause plus costs identified in subclause (II)(-b-) of this clause, or the "as-is" value conclusion evidenced by subclause (II)(-a-) of this clause.

(v) As described in clauses (ii) and (iii) of this subparagraph, property control must be continuous. Closing on the property is acceptable, as long as evidence is provided that there was no period in which control was not retained.

(B) Evidence from the appropriate local municipal authority that satisfies one of clauses (i) - (iii) of this subparagraph. Documentation may be from more than one department of the municipal authority and must have been prepared and executed not more than 6 months prior to the close of the Application Acceptance Period. (§2306.6705(5))

(i) For New Construction or reconstruction Developments, a letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction stating that:

(I) The Development is located within the boundaries of a political subdivision which does not have a zoning ordinance; and either subclauses (II) or (III) of this clause;

(II) The letter must state that the Development is consistent with a local consolidated plan, comprehensive plan, or other local planning document that addresses affordable housing; or

(III) The letter must state that there is a need for affordable housing, if no such planning document exists.

(ii) For New Construction or reconstruction Developments, a letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction stating that:

(I) The Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development; or

(II) The Applicant is in the process of seeking the appropriate zoning and has signed and provided to the political subdivision a release agreeing to hold the political subdivision and all other parties harmless in the event that the appropriate zoning is denied, and a time schedule for completion of appropriate zoning. The Applicant must also provide at the time of Application a copy of the application for appropriate zoning filed with the local entity responsible for zoning approval and proof of delivery of that application in the form of a signed certified mail receipt, signed overnight mail receipt, or confirmation letter from said official. Final approval of appropriate zoning must be achieved and documentation of acceptable zoning for the Development, as proposed in the Application, must be provided to the Department at the time the Commitment Fee, or Determination Notice Fee, is paid. If this evidence is not provided with the Commitment Fee, any commitment of credits will be rescinded. No extensions may be

requested for the deadline for submitting evidence of final approval of appropriate zoning.

(iii) For Rehabilitation Developments, if the property is currently a non-conforming use as presently zoned, a letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction which addresses the items in subclauses (I) - (IV) of this clause:

(I) A detailed narrative of the nature of non-conformance;

(II) The applicable destruction threshold;

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

(IV) Penalties for noncompliance.

(C) Evidence of interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department and any other sources documented in the Application. Any local, state or federal financing identified in this section which restricts household incomes at any AMGI lower than restrictions required pursuant to the Rules must be identified in the Rent Schedule and the local, state or federal income restrictions must include corresponding rent levels that do not exceed 30% of the income limitation in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be imposed by the Housing Tax Credit LURA and monitored throughout the extended use period. Such evidence must be consistent with the sources and uses of funds represented in the Application and shall be provided in one or more of the following forms described in clauses (i) - (iv) of this subparagraph:

(i) Bona fide financing in place as evidenced by:

(I) A valid and binding loan agreement;

(II) Deed(s) of trust in the name of the Development Owner expressly allowing transfer to the Development Owner; and

(III) For TRDO-USDA §515 Developments involving, an executed TRDO-USDA letter indicating TRDO-USDA has received a Consent Request, also referred to as a Preliminary Submittal, as described in 7 CFR §3560.406 and a copy of the original loan documents; or,

(ii) Bona fide commitment or term sheet for the interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money which is addressed to the Development Owner and which has been executed by the lender (the term of the loan must be for a minimum of 15 years with at least a 30 year amortization). The commitment must state an expiration date and all the terms and conditions applicable to the financing including the mechanism for determining the interest rate, if applicable, and the anticipated interest rate and any required Guarantors. Such a commitment may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits; or,

(iii) Any Federal, State or local gap financing, whether of soft or hard debt, must be identified at the time of Application as evidenced by:

(I) Evidence from the lending agency that an application for funding has been made or from the Applicant indicating an intent to apply for funding; and

(II) A term sheet which clearly describes the amount and terms of the funding, and the date by which the funding determination will be made and any commitment issued, must be submitted; and

(III) Evidence of application for funding from another Department program is not required except as indicated on the Uniform Application, as long as the Department funding is on a concurrent funding period with the Application submitted and the Applicant clearly indicates that such an Application has been filed as required by the Application Submission Procedures Manual; and

(IV) If the commitment from any funding source identified in this subparagraph has not been received by the date the Department's Commitment Notice is to be submitted, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the funding source, the Commitment Notice may be rescinded; or

(iv) If the Development will be financed through more than 5% of Development Owner contributions, provide a letter from an Third Party CPA verifying the capacity of the Development Owner to provide the proposed financing with funds that are not otherwise committed together with a letter from the Development Owner's bank or banks confirming that sufficient funds are available to the Development Owner. Documentation must have been prepared and executed not more than 6 months prior to the close of the Application Acceptance Period.

(D) Provide the documents in clauses (i) - (iii) of this subparagraph:

(i) A copy of the full legal description for the Development Site; and

(ii) A current valuation report from the county tax appraisal district and documentation of the current total property tax rate for the Development Site, and

(iii) A copy of:

(I) The current title policy which shows that the ownership (or leasehold) of the Development Site is vested in the exact name of the Development Owner; or

(II) a current title commitment with the proposed insured matching exactly the name of the Development Owner and the title of the Development Site vested in the exact name of the seller or lessor as indicated on the sales contract, option or lease.

(III) If the title policy or commitment is more than six months old as of the day the Application Acceptance Period closes, then a letter from the title company indicating that nothing further has transpired on the policy or commitment.

(8) Evidence in the form of a certification of all of the notifications described in the subparagraphs of this paragraph. Such notices must be prepared in accordance with the "Public Notifications" certification provided in the Application.

(A) Evidence in the form of a certification that the Applicant met the requirements and deadlines identified in clauses (i) - (iii) of this subparagraph. Notification must not be older than three months from the first day of the Application Acceptance Period. (§2306.6705(9)). If evidence of these notifications was submitted with the Pre-Application Threshold for the same Application and satisfied the Department's review of Pre-Application Threshold, then no additional notification is required at Application, except that re-notification is required by tax credit Applicants who have submitted a change in the Application, whether from Pre-Application to Application or as a result of an Administrative Deficiency that reflects a total Unit increase of greater than 10%, a total increase of greater than 10% for any given

level of AMGI, or a change to the population being served (elderly, Intergenerational Housing or family). For Applications submitted for Tax-Exempt Bond Developments or Applications not applying for Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.), notifications and proof thereof must not be older than three months prior to the date the Volume III of the Application is submitted.

(i) The Applicant must request a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site from local elected officials as follows:

(I) No later than January 15, 2008 for Competitive Housing Tax Credit Applications (or for Tax-Exempt Bond Applications, Rural Rescue, or Applications not applying for Tax Credits, but applying only for other Multifamily Programs such as HOME, Housing Trust Fund, etc., not later than 21 days prior to submission of the Threshold documentation), the Applicant must e-mail, fax or mail with registered receipt a completed "Neighborhood Organization Request" letter as provided in the Application to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an Area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located an Area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format.

(II) If no reply letter is received from the local elected officials by February 21, 2008, (or For Tax-Exempt Bond Developments or Applications not applying for Tax Credits, but applying only for other Multifamily Programs such as HOME, Housing Trust Fund, etc., by 7 days prior to the submission of the Application), then the Applicant must certify to that fact in the "Application Notification Certification Form" provided in the Application.

(III) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as outlined by the local elected officials, or that the Applicant has knowledge of as of the submission of the Application, in the "Application Notification Certification Form" provided in the Application.

(ii) Not later than the date the Application is submitted, notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt return or similar tracking mechanism e-mail, fax or mail with registered receipt in the format required in the "Application Notification Template" provided in the Application. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are not required to notify city officials. Evidence of Notification is required in the form of a certification in the "Application Notification Certification Form" provided in the Application, although it is encouraged that Applicants retain proof of notifications in the event that the Department requires proof of Notification. Officials to be notified are those officials in office at the time the Application is submitted.

(I) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site as identified in clause (i)(III) of this subparagraph.

(II) Superintendent of the school district containing the Development;

(III) Presiding officer of the board of trustees of the school district containing the Development;

(IV) Mayor of the governing body of any municipality containing the Development;

(V) All elected members of the governing body of any municipality containing the Development;

(VI) Presiding officer of the governing body of the county containing the Development;

(VII) All elected members of the governing body of the county containing the Development;

(VIII) State senator of the district containing the Development; and

(IX) State representative of the district containing the Development.

(iii) Each such notice must include, at a minimum, all of the following:

(I) The Applicant's name, address, individual contact name and phone number;

(II) The Development name, address, city and county;

(III) A statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(IV) Statement of whether the Development proposes New Construction, reconstruction, Adaptive Reuse or Rehabilitation;

(V) The type of Development being proposed (single family homes, duplex, apartments, townhomes, high-rise etc.) and population being served (family, Intergenerational Housing or elderly);

(VI) The approximate total number of Units and approximate total number of low-income Units;

(VII) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the approximate percentage of Units that are market rate;

(VIII) The number of Units and proposed rents (less utility allowances) for the low-income Units and the number of Units and the proposed rents for any market rate Units. Rents to be provided are those that are effective at the time of the Application, which are subject to change as annual changes in the area median income occur; and

(IX) The expected completion date if credits are awarded.

(B) Signage on Property or Alternative. A Public Notification Sign shall be installed on the Development Site prior to the date the Application is submitted unless prohibited by local ordinance or code. Scattered site Developments must install a sign on each Development Site. For Competitive Housing Tax Credit Applications the date, time and location of the public hearing, as published by the Department and closest to the Development Site, must be included on the sign. For Tax-Exempt Bond Developments, regardless of the Priority of the Application or the Issuer, the sign must be installed within thirty (30) days of the Department's receipt of Volumes I and II. The date, time and location of the bond Tax Exempt Fiscal Responsibility Act (TEFRA) public hearing must be included on the sign no later than

thirty (30) days prior to the scheduled public hearing. Evidence submitted with the Application must include photographs of the site with the installed sign. The sign must be at least 4 feet by 8 feet in size and located within twenty feet of, and facing, the main road adjacent to the site. The sign shall be continuously maintained on the site until the day that the Board takes final action on the Application for the Development. The information and lettering on the sign must meet the requirements identified in the Application. For Tax-Exempt Bond Developments, regardless of the issuer, the Applicant must certify to the fact that the sign was installed within 30 days of submission and the date, time and location of the bond hearing is indicated on the sign at least 30 days prior to the date of the scheduled hearing. In areas where the Public Notification Sign is prohibited by local ordinance or code, an alternative to installing a Public Notification Sign and at the same required time, the Applicant shall, mail written notification to those addresses described in either clause (i) or (ii) of this subparagraph. This written notification must include the information otherwise required for the sign as provided in the Application. The final Application must include a map of the proposed Development Site and mark the distance required by clause (i) or (ii) of this subparagraph, up to 1,000 feet, showing street names and addresses; a list of all addresses the notice was mailed to; an exact copy of the notice that was mailed; and a certification that the notice was mailed through the U.S. Postal Service and stating the date of mailing. If Public Notification Sign is prohibited by local ordinance or code, evidence of the applicable ordinance or code must be submitted in the Application.

(i) All addresses required for notification by local zoning notification requirements. For example, if the local zoning notification requirement is notification to all those addresses within 200 feet, then that would be the distance used for this purpose; or

(ii) For Developments located in communities that do not have zoning, communities that do not require a zoning notification or those located outside of a municipality, all addresses located within 1,000 feet of any part of the proposed Development Site.

(C) If any of the Units in the Development are occupied at the time of Application, then the Applicant must certify that it has notified each tenant at the Development of all the information otherwise required on the sign, including the Department's public hearing schedule for comment on submitted Applications.

(9) Evidence of the Development's proposed ownership structure and the Applicant's previous experience as described in subparagraphs (A) - (D) of this paragraph.

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

(B) Each Applicant, Development Owner, Developer or Guarantor, or any entity shown on an organizational chart as described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, shall provide the following documentation, as applicable:

(i) For entities that are not yet formed but are to be formed either in or outside of the state of Texas, a certificate of reservation of the entity name from the Texas Secretary of State; or

(ii) For existing entities whether formed in or outside of the state of Texas, evidence that the entity has the authority to do business in Texas or has applied for such authority.

(C) Evidence that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, has provided a copy of the completed and executed Previous Participation and Background Certification Form to the Department. Nonprofit entities, public housing authorities and publicly traded corporations are required to submit documentation for the entities involved; documentation for individual board members and executive directors is required for this exhibit. Any Person receiving more than 10% of the Developer fee will also be required to submit documents for this exhibit. The 2008 versions of these forms, as required in the Uniform Application, must be submitted. Units of local government are also required to submit this document. The form must include a list of all developments that are, or were, previously under ownership or Control of the Person. All participation in any TDHCA funded or monitored activity, including non-housing activities, must be disclosed.

(D) Evidence, in the form of a certification, that one of the Development Owner's General Partners, the Developer or their Principals have a record of successfully constructing or developing residential units in the capacity of owner, General Partner or Developer. Evidence must be a certification from the Department that the Person with the experience satisfies this exhibit, as further described under subsection (g)(1) of this section. Applicants must request this certification at least fourteen days prior to the close of the Application Acceptance Period. Applicants must ensure that the Person whose name is on the certification appears in the organizational chart provided in subparagraph (A) of this paragraph.

(10) Evidence of the Development's projected income and operating expenses as described in subparagraphs (A) - (D) of this paragraph:

(A) All Developments must provide a 30-year proforma estimate of operating expenses and supporting documentation used to generate projections (operating statements from comparable properties).

(B) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds or proof of application for such funds must be provided, which at a minimum identifies the source and annual amount of the funds, the number of Units receiving the funds, and the term and expiration date of the contract or other agreement. (§2306.6705(4))

(C) Applicant must provide documentation from the source of the "Utility Allowance" estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate.

(D) Occupied Developments undergoing Rehabilitation must also submit the items described in clauses (i) - (iv) of this subparagraph.

(i) The items in subclauses (I) and (II) of this clause are required unless the current property owner is unwilling to provide the required documentation. In that case, submit a signed statement as to the Applicant's inability to provide all documentation as described.

(I) Submit at least one of the following:

(-a-) Historical monthly operating statements of the subject Development for 12 consecutive months ending not more than 3 months from the first day of the Application Acceptance Period;

(-b-) The two most recent consecutive annual operating statement summaries;

(-c-) The most recent consecutive six months of operating statements and the most recent available annual operating summary;

(-d-) All monthly or annual operating summaries available and a written statement from the seller refusing to supply any other summaries or expressing the inability to supply any other summaries, and any other supporting documentation used to generate projections may be provided; and

(II) A rent roll not more than 6 months old as of the first day the Application Acceptance Period, that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, tenant names or vacancy, and dates of first occupancy and expiration of lease.

(ii) A written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))

(iii) For Intergenerational Housing Applications or Qualified Elderly Developments, identification of the number of existing tenants qualified under the target population elected under this title;

(iv) A relocation plan outlining relocation requirements and a budget with an identified funding source; and (§2306.6705(6))

(v) If applicable, evidence that the relocation plan has been submitted to the appropriate legal or governmental agency. (§2306.6705(6))

(11) Applications involving Nonprofit General Partners and Qualified Nonprofit Developments.

(A) All Applications involving a nonprofit General Partner, regardless of the Set-Aside applied under, in which the Development will receive some financial or tax benefit for the involvement of the nonprofit General Partner, must submit all of the documents described in clauses (i) and (ii) of this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609: (§2306.6706)

(i) An IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity or; and

(ii) The "Nonprofit Participation Exhibit."

(B) Additionally, all Applications applying under the Nonprofit Set-Aside, established under §50.7(b)(1) of this chapter, must also provide the following information with respect to the Qualified Nonprofit Organization as described in clauses (i) - (iii) of this subparagraph.

(i) A Third Party legal opinion stating:

(I) That the nonprofit organization is not affiliated with or Controlled by a forprofit organization and the basis for that opinion, and

(II) That the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside and the basis for that opinion. Eligibility is contingent upon the non-profit organization Controlling the Development, or if the organization's Application is filed on behalf of a limited partnership, or limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member; and otherwise meet the requirements of the Code, §42(h)(5),

(III) That one of the exempt purposes of the nonprofit organization is to provide low-income housing, and

(IV) That the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board, and

(V) That the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement; and

(ii) A copy of the nonprofit organization's most recent audited financial statement; and

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

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

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

(12) Applicants applying for acquisition credits must provide must provide

(A) An appraisal meeting the requirements of paragraph (14)(D) of this subsection, and

(B) An "Acquisition of Existing Buildings Form."

(13) Evidence of Financial Statement and Authorization to Release Credit Information. The financial statements and authorization to release credit information must be unbound and clearly labeled. A "Financial Statement and Authorization to Release Credit Information" must be completed and signed for any General Partner, Developer or Guarantor and any Person that has an ownership interest of 10% or more in the Development Owner, General Partner, Developer, or Guarantor. Nonprofit entities, public housing authorities and publicly traded corporations are only required to submit documentation for the entities involved; documentation for individual board members and executive directors is not required for this exhibit.

(A) Financial statements for an individual must not be older than 90 days from the first day of the Application Acceptance Period.

(B) Financial statements for partnerships or corporations should be for the most recent fiscal year ended 90 days from the first day of the Application Acceptance Period. An audited financial statement should be provided, if available, and all partnership or corporate financials must be certified. Financial statements are required for an entity even if the entity is wholly-owned by a Person who has submitted this document as an individual.

(C) Entities that have not yet been formed and entities that have been formed recently but have no assets, liabilities, or net worth are not required to submit this documentation, but must submit a statement with their Application that this is the case.

(14) Supplemental Threshold Reports. All Applications must include documents under subparagraphs (A) and (B) of this paragraph. If required under paragraph (6) of this subsection, a Property Condition Assessment as described in subparagraph (C) of this paragraph must be submitted. If required under paragraph (7) or (12) of this subsection, an appraisal as described in subparagraph (D) of this paragraph must be submitted. All submissions must meet the requirements stated in subparagraphs (E) - (G) of this paragraph.

(A) A Phase I Environmental Site Assessment (ESA) report:

(i) Prepared by a qualified Third Party;

(ii) Dated not more than 12 months prior to the first day of the Application Acceptance Period. In the event that a Phase I Environmental Site Assessment on the Development is more than 12 months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated letter or updated report dated not more than three months prior to the first day of the Application Acceptance Period from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report; and

(iii) Prepared in accordance with the Department's Environmental Site Assessment Rules and Guidelines, §1.35 of this title.

(iv) Developments whose funds have been obligated by TRDO-USDA will not be required to supply this information; however, the Applicants of such Developments 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.

(B) A comprehensive Market Analysis report:

(i) Prepared by a Third Party Qualified Market Analyst approved by the Department in accordance with the approval process outlined in the Market Analysis Rules and Guidelines, §1.33 of this title;

(ii) Dated not more than 6 months prior to the first day of the Application Acceptance Period. In the event that a Market Analysis is more than 6 months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated Market Analysis from the Person or organization which prepared the initial report; however the Department will not accept any Market Analysis which is more than 12 months old as of the first day of the Application Acceptance Period; and

(iii) Prepared in accordance with the methodology prescribed in the Department's Market Analysis Rules and Guidelines, §1.33 of this title.

(iv) For Applications in the TRDO-USDA Set-Aside proposing acquisition and Rehabilitation with residential structures at or above 80% occupancy at the time of Application Submission, the appraisal, required under paragraphs (7) or (12) of this subsection and prepared in accordance with the Uniform Standards of Professional Appraisal Practice and the Department's Appraisal Rules and Guidelines, §1.34 of this title, will satisfy the requirement for a Market Analysis; however the Department may request additional information as needed. (§2306.67055) (§42(m)(1)(A)(iii))

(C) A Property Condition Assessment (PCA) report:

(i) Prepared by a qualified Third Party;

(ii) Dated not more than 6 months prior to the first day of the Application Acceptance Period; and

(iii) Prepared in accordance with the Department's Property Condition and Assessment Rules and Guidelines, §1.36 of this title.

(iv) For Developments which require a capital needs assessment from TRDO-USDA, the capital needs assessment may be substituted and may be more than 6 months old, as long as TRDO-USDA has confirmed in writing that the existing capital needs assessment is still acceptable.

(D) An appraisal report:

(i) Prepared by a qualified Third Party;

(ii) Dated not more than 6 months prior to the first day of the Application Acceptance Period. In the event that an appraisal is more than 6 months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated appraisal from the Person or organization which prepared the initial report; however the Department will not accept any appraisal which is more than 12 months old as of the first day of the Application Acceptance Period; and

(iii) Prepared in accordance with the Uniform Standards of Professional Appraisal Practice and the Department's Appraisal Rules and Guidelines, §1.34 of this title.

(iv) For Developments that require an appraisal from TRDO-USDA, the appraisal may be more than 6 months old, as long as TRDO-USDA has confirmed in writing that the existing appraisal is still acceptable.

(E) Inserted at the front of each of these reports must be a transmittal letter from the individual preparing the report that states that the Department is granted full authority to rely on the findings and conclusions of the report. The transmittal letter must also state the report preparer has read and understood the Department rules specific to the report found at §§1.33 - 1.36 of this title.

(F) All Applicants acknowledge by virtue of filing an Application that the Department is not bound by any opinion expressed in the report. The Department may determine from time to time that information not required in the Department's Rules and Guidelines will be relevant to the Department's evaluation of the need for the Development and the allocation of the requested Housing Credit Allocation Amount. The Department may request additional information from the report provider or revisions to the report to meet this need. In instances of non-response by the report provider, the Department may substitute in-house analysis.

(G) The requirements for each of the reports identified in subparagraphs (A) - (C) of this paragraph can be satisfied in either of the methods identified in clause (i) or (ii) of this subparagraph and meet the requirements of clause (iii) of this subparagraph.

(i) Upon Application submission, the documentation for each of these exhibits may be submitted in its entirety; or

(ii) Upon Application submission, the Applicant may provide evidence in the form of an executed engagement letter with the party performing each of the individual reports that the required exhibit has been commissioned to be performed and that the delivery date will be no later than April 1, 2008. In addition to the submission of the engagement letter with the Application, a map must be provided that reflects the Qualified Market Analyst's intended market area. Subsequently, the entire exhibit must be submitted on or before 5:00 p.m. CST, April 1, 2008. If the entire exhibit is not received by that time, the Application will be terminated and will be removed from consideration.

(iii) A single hard copy of the report and a searchable soft copy in the format of a single file containing all information and exhibits in the hard copy report, presented in the order they appear in the hard copy report on a CD-R clearly labeled with the report type, Development name, and Development location are required.

(15) Self-Scoring. Applicant's self-score must be completed on the "Application Self-Scoring Form." An Applicant may not adjust the Application Self Scoring Form without a request from the Department as a result of an Administrative Deficiency.

(i) Selection Criteria. All Applications will be scored and ranked using the point system identified in this subsection. Unless otherwise stated, use normal rounding. Points other than paragraphs (2) and (6) of this subsection will not be awarded unless requested in the Self Scoring Form. All Applications, with the exception of TRDO-USDA Applications, must receive a final score totaling a minimum of 111, not including any points awarded or deducted pursuant to paragraphs (2) and (6) of this subsection to be eligible for an allocation of Housing Tax Credits. Maximum Total Points: 228.

(1) Financial Feasibility of the Development. Financial Feasibility of the Development based on the supporting financial data required in the Application that will include a Development underwriting pro forma from the permanent or construction lender. (§2306.6710(b)(1)(A)). Applications may qualify to receive 28 points for this item. No partial points will be awarded. Evidence will include the documentation required for this exhibit, as reflected in the Application submitted, in addition to the commitment letter required under subsection (h)(7)(C) of this section. The supporting financial data shall include:

(A) A fifteen year pro forma prepared by the permanent or construction lender:

(i) Specifically identifying each of the first five years and every fifth year thereafter;

(ii) Specifically identifying underlying assumptions including, but not limited to general growth factor applied to income and expense; and

(iii) Indicating that the Development maintains a minimum 1.15 debt coverage ratio throughout the initial fifteen years proposed for all third party lenders that require scheduled repayment; and

(B) A statement in the commitment letter, or other form deemed acceptable by the Department, indicating that the lender's assessment finds that the Development will be feasible for fifteen years.

(C) For Developments receiving financing from TRDO-USDA, the form entitled "Sources and Uses Comprehensive Evaluation for Multi-Family Housing Loans" or other form deemed acceptable by the Department shall meet the requirements of this section.

(2) Quantifiable Community Participation from Neighborhood Organizations on Record with the State or County and Whose Boundaries Contain the Proposed Development Site. Points will be awarded based on written statements of support or opposition from Neighborhood Organizations on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development site. (§2306.6710(b)(1)(B); §2306.6725(a)(2)). It is possible for points to be awarded or deducted based on written statements from organizations that were not identified by the process utilized for notification purposes under subsection (h)(8)(A)(ii) of this section if the organization provides the information and documentation required in subparagraphs (A) - (C) of this paragraph. It is also possible that neighborhood organizations that were initially identified as appropriate organizations for purposes of the notification requirements will subsequently be determined by the Department not to meet the requirements for scoring.

(A) Basic Submission Requirements for Scoring. Each Neighborhood Organization may submit one letter (and enclosures) that represents the organization's input. In order to receive a point score, the letter (and enclosures) must be received or postmarked (or similar tracking system) by the Department no later than February 29, 2008, for letters relating to Applications that submitted a Pre-Application, or April 1, 2008 if a Pre-Application was not submitted. Letters should be addressed to the Texas Department of Housing and Community Affairs, "Attention: Executive Director (Neighborhood Input)." Letters received after the applicable deadline will be summarized for the Board's information and consideration, but will not affect the score for the Application. The organization's letter (and enclosures) must:

(i) State the name and location of the proposed single Development;

(ii) Certify that the letter is signed by the person with the authority to sign on behalf of the neighborhood organization, and provide:

(I) the street and/or mailing addresses;

(II) day and evening phone numbers;

(III) and e-mail addresses and/or facsimile numbers for the signer of the letter; and

(IV) for one additional contact including their contact information for the organization;

(iii) Certify that the organization has boundaries, and that the boundaries in effect February 29, 2008 contain the proposed Development Site;

(iv) Certify that the organization meets the definition of "Neighborhood Organization as defined in §50.3(63) of this chapter." For the purposes of this section, a "Neighborhood Organization" is defined as an organization of persons living near one another within the organization's defined boundaries in effect February 29, 2008 that contain the proposed Development site and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood. "Neighborhood Organizations" include homeowners associations, property owners associations, and resident councils in which the council is commenting on the Rehabilitation or reconstruction of the property occupied by the residents. "Neighborhood Organizations" do not include broader based "community" organizations.

(v) Include documentation showing that the organization is on record as of February 29, 2008 with the state or county in which the Development is proposed to be located. The receipt of a QCP letter, by the Department on or before February 29, 2008, that meets the requirements outlined in the QCP neighborhood information packet and the 2008 QAP, will constitute being on record with the State. The Neighborhood Organization must include in its letter, a contact name with a mailing address and phone number; and a written description and map of the organization's geographical boundaries, as well as proof that the boundaries described were in effect as of February 29, 2008. This request must be received no later than February 29, 2008. Acceptance of this documentation will be subject to Department approval. The Department is permitted to issue a deficiency notice for this registration process and if satisfied, the organization will still be deemed to be timely placed on record with the state.

(vi) Accurately certify that the Neighborhood Organization was not formed by any Applicant, Developer, or any employee or agent of any Applicant (the seller of land is not considered, with the exception of an identity of interest, to be an agent of the Application) in the 2008 Competitive Housing Tax Credit Application Round, that the organization and any member did not accept money or

a gift to cause the Neighborhood Organization to take its position of support or opposition, and has not provided any assistance other than education and information sharing to the Neighborhood Organization to meet the requirements of this subparagraph for any Application in the Application Round (i.e. hosting a public meeting, providing the "TDHCA Information Packet for Neighborhoods" to the Neighborhood Organization, or referring the Neighborhood Organization to TDHCA staff for guidance). Applicants may not provide any "production" assistance to meet these requirements for any Application in the Application Round (i.e. use of fax machines owned by the Applicant, use of legal counsel related to the Applicant, or assistance drafting a letter for the purposes of this subparagraph).

(vii) While not required, the organization is encouraged to hold a meeting to which all the members of the organization are invited to consider whether the organization should support, oppose, or be neutral on the proposed Development, and to have the membership vote on whether the organization should support, oppose, or be neutral on the proposed Development. The organization is also encouraged to invite the Developer or Applicant to this meeting.

(viii) Letters from Neighborhood Organizations, and subsequent correspondence from Neighborhood Organizations, may not be provided via the Applicant which includes facsimile and email communication.

(B) Scoring of Letters (and Enclosures). The input must clearly and concisely state each reason for the Neighborhood Organization's support for or opposition to the proposed Development.

(i) The score awarded for each letter for this exhibit will range from a maximum of +24 for the position support to +12 for the neutral position to 0 for a position of opposition. The number of points to be allocated to each organization's letter will be based on the organization's letter and evidence enclosed with the letter. The final score will be determined by the Executive Director. The Department may investigate a matter and contact the Applicant and Neighborhood Organizations for more information. The Department may consider any relevant information specified in letters from other Neighborhood Organizations regarding a Development in determining a score.

(ii) The Department highly values quality public input addressed to the merits of a Development. Input that points out matters that are specific to the neighborhood, the proposed site, the proposed Development, or Developer are valued. If a proposed Development is permitted by the existing or pending zoning or absence of zoning, concerns addressed by the allowable land use that are related to any multifamily development may generally be considered to have been addressed at the local level through the land use planning process. Input concerning positive efforts or the lack of efforts by the Applicant to inform and communicate with the neighborhood about the proposed Development is highly valued. If the Neighborhood Organization refuses to communicate with the Applicant the efforts of the Applicant will not be considered negative. Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered.

(iii) In general, letters that meet the requirements of this paragraph and:

(I) Establish at least one reason for support or opposition will be scored the maximum points for either support (+24 points) or opposition (zero);

(II) That do not establish a reason for support or opposition or that are unclear will be considered ineligible and scored as neutral (+12 points).

(iv) If an Application receives multiple eligible letters, the average score of all eligible letters will be applied to the Application.

(v) Applications for which no letters from Neighborhood Organizations are scored will receive a neutral score of +12 points.

(C) Basic Submission Deficiencies. The Department is authorized but not required to request that the Neighborhood Organization provide additional information or documentation the Department deems relevant to clarify information contained in the organization's letter (and enclosures). If the Department determines to request additional information from an organization, it will do so by e-mail or facsimile to the e-mail address or facsimile number provided with the organization's letter. If the deficiencies are not clarified or corrected in the Department's determination within seven business days from the date the e-mail or facsimile is sent to the organization, the organization's letter will not be considered further for scoring and the organization will be so advised. This potential deficiency process does not extend any deadline required above for the "Quantifiable Community Participation" process. An organization may not submit additional information or documentation after the applicable deadlines except in response to an e-mail or facsimile from the Department specifically requesting additional information.

(3) The Income Levels of Tenants of the Development. Applications may qualify to receive up to 22 points for qualifying under only one of subparagraphs (A) - (F) of this paragraph. To qualify for these points, the household incomes must not be higher than permitted by the AMGI level The Development Owner, upon making selections for this exhibit, will set aside Units at the levels of AMGI and will maintain the percentage of such Units continuously over the compliance and extended use period as specified in the LURA. These income levels require corresponding rent levels that do not exceed 30% of the income limitation in accordance with §42(g), Internal Revenue Code. (§2306.6710(b)(1)(C); §2306.111(g)(3)(B); §2306.6710(e); §42(m)(1)(B)(ii)(I); §2306.111(g)(3)(E))

(A) 22 points if at least 80% of the Total Units in the Development are set-aside with incomes at or below 50% of AMGI; or

(B) 22 points if at least 40% of the Total Units in the Development are set-aside with incomes at or below a combination of 50% and 30% of AMGI in which at least 5% of the Total Units are at or below 30% of AMGI; or

(C) 20 points if at least 60% of the Total Units in the Development are set-aside with incomes at or below 50% of AMGI; or

(D) 18 points if at least 10% of the Total Units in the Development are set-aside with incomes at or below 30% of AMGI; or

(E) 16 points if at least 40% of the Total Units in the Development are set-aside with incomes at or below 50% of AMGI; or

(F) 14 points if at least 35% of the Total Units in the Development are set-aside with incomes at or below 50% of AMGI.

(4) The Size and Quality of the Units (Development Characteristics). Applications may qualify to receive up to 20 points. Applications may qualify for points under both subparagraphs (A) and (B) of this paragraph. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii))

(A) Size of the Units. Applications may qualify to receive 6 points. The Development must meet the minimum require-

ments identified in this subparagraph to qualify for points. Six points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), Developments receiving funding from TRDO-USDA, or Developments proposing single room occupancy without meeting these square footage minimums if requested in the Self Scoring Form. The square feet of all of the Units in the Development, for each type of Unit, must be at least the minimum noted in clauses (i) - (v) of this subparagraph. Changes to an Application during any phase of the review process that decreases the square footage below the minimums noted in clause (i) - (v) of this subparagraph, will be re-evaluated and may result in a reduction of the Application score.

(i) 500 square feet for an efficiency Unit;

(ii) 650 square feet for a non-elderly one Bedroom Unit; 550 square feet for an elderly one Bedroom Unit;

(iii) 900 square feet for a non-elderly two Bedroom Unit; 750 square feet for an elderly two Bedroom Unit;

(iv) 1,000 square feet for a three Bedroom Unit; and

(v) 1,200 square feet for a four Bedroom Unit.

(B) Quality of the Units. Applications may qualify to receive up to 14 points. Applications in which Developments provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in clauses (i) - (xix) of this subparagraph, not to exceed 14 points in total. Applications involving scattered site Developments must have all of the Units located with a specific amenity to count for points. Applications involving Rehabilitation (excluding reconstruction) or single room occupancy may receive 1.5 points for each point item, not to exceed 14 points in total.

(i) Covered entries (1 point);

(ii) Nine foot ceilings in living room and all bedrooms (at minimum) (1 point);

(iii) Microwave ovens (1 point);

(iv) Self-cleaning or continuous cleaning ovens (1 point);

(v) Ceiling fixtures in all rooms (light with ceiling fan in living area and all bedrooms) (1 point);

(vi) Refrigerator with icemaker (1 point);

(vii) Laundry connections (2 points);

(viii) Storage room or closet, of approximately 9 square feet or greater, which does not include bedroom, entryway or linen closets - does not need to be in the Unit but must be on the property site (1 point);

(ix) Laundry equipment (washers and dryers) for each individual unit including a front loading washer and dryer in required UFAS compliant Units (3 points);

(x) Thirty year architectural shingle roofing (1 point);

(xi) Covered patios or covered balconies (1 point);

(xii) Covered parking (including garages) of at least one covered space per Unit (2 points);

(xiii) 100% masonry on exterior, which can include stucco, cementitious board products, concrete brick and mortarless concrete masonry, but not EIFS synthetic stucco (3 points);

(xiv) Greater than 75% masonry on exterior, which can include stucco and cementitious board products, concrete brick and mortarless concrete masonry, but not EIFS synthetic stucco (1 point);

(xv) Use of energy efficient alternative construction materials (for example, Structural Insulated Panel construction) with wall insulation at a minimum of R-20 (3 points);

(xvi) R-15 Walls / R-30 Ceilings (rating of wall system) (3 points);

(xvii) 14 SEER HVAC or evaporative coolers in dry climates for New Construction, Adaptive Reuse, and reconstruction or radiant barrier in the attic for Rehabilitation (excluding reconstruction) (3 points);

(xviii) High Speed Internet service to all Units at no cost to residents (2 points); or

(xix) Fire sprinklers in all Units (2 points).

(5) The Commitment of Development Funding by Local Political Subdivisions. Applications may qualify to receive up to 18 points for qualifying under this paragraph provided for under Development Funding. (§2306.6710(b)(1)(E))

(A) Basic Submission Requirements for Scoring. Evidence of the following must be submitted in accordance with the Application Submission Procedures Manual (ASPM).

(i) The loans, grant(s) or in-kind contribution(s) must be attributed to the Total Housing Development Costs, as defined in this title, unless otherwise stipulated in this section.

(ii) An Applicant may only submit enough sources to substantiate the point request, and all sources must be included in the Sources and Uses form. For example, if an Applicant is requesting 18 points, five sources may be submitted if each is for an amount equal to 1% of the Total Housing Development Cost. However, five sources may not be submitted if each source is for an amount equal to 5% of the Total Housing Development Cost.

(iii) An Applicant may substitute any source in response to a Deficiency Notice or after the Application has been submitted to the Department.

(iv) A loan does not qualify as an eligible source unless it has a minimum term of the later of 1-year or the Placed in Service date, and the interest rate must be at the Applicable Federal Rate (AFR) or below (at the time of loan closing).

(v) In-kind contributions such as donation of land, tax exemptions, or waivers of fees such as building permits, water and sewer tap fees, or similar contributions are only eligible for points if the in-kind contribution provides a tangible economic benefit that results in a quantifiable Total Housing Development Cost reduction to benefit the Development will be acceptable to qualify for these points. The quantified value of the Total Housing Development Cost reduction may only include the value during the period the contribution or waiver is received and/or assessed. Donations of land must be under the control of the Applicant, pursuant to subsection (h)(7) of this section to qualify. The value of in-kind contributions may only include the time period between award, or August 1, 2008 and the Development's Placed in Service date, with the exception of contributions of land. The full value of land contributions, as established by the appraisal required pursuant to clause (viii) of this subparagraph. Contributions in the form of tax exemptions or abatements may only count for points if the contribution is in addition to any tax exemption or abatement required under statute.

(vi) To the extent that a Notice of Funding Availability (NOFA) is released and funds are available, funds from TDHCA's

HOME Investment Partnerships (HOME) Program will qualify if a resolution, dated on or before the date the Application Acceptance Period ends, is submitted with the Application from the Local Political Subdivision authorizing the Applicant to act on behalf of the Local Political Subdivision in applying for HOME Funds from TDHCA for the particular Application. TDHCA's HOME funds may be substituted for a source originally submitted with the Application, provided the HOME funds substituted are from a NOFA released after the Application Acceptance Period ends and a resolution is submitted with the substitution documentation from the Local Political Subdivision authorizing the Applicant to act on behalf of the Local Political Subdivision in applying for HOME Funds from TDHCA for the particular Application.

(vii) Development based rental subsidies may qualify under this section if evidence of the remaining value of the contract is submitted from the Local Political Subdivision. The value of the contract does not include past subsidies.

(viii) Evidence to be submitted with the Application must include a copy of the commitment of funds; a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received; or a certification of intent to apply for funding that indicates the funding entity and program to which the application will be submitted, the loan amount to be applied for and the specific proposed terms. For in-kind contributions, evidence must be submitted in the Application from Local Political Subdivision substantiating the value of the in-kind contributions. For in-kind contributions of land, evidence of the value of the contribution must be in the form of an appraisal.

(ix) If not already provided, at the time the executed Commitment Notice is required to be submitted, the Applicant or Development Owner must provide evidence of a commitment approved by the governing body of the Local Political Subdivision for the Development Funding to the Department. If the funding commitment from the Local Political Subdivision has not been received by the date the Department's Commitment Notice is to be submitted, the Application will be evaluated to determine if the loss of these points would have resulted in the Department's not committing the tax credits. If the loss of points would have made the Application noncompetitive, the Commitment Notice will be rescinded and the credits reallocated. If the Application would still be competitive even with the loss of points and the loss would not have impacted the recommendation for an award, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the Local Political Subdivision's Development Funding, the Commitment Notice will be rescinded and the credits reallocated.

(x) Funding commitments from a Local Political Subdivision will not be considered final unless the Local Political Subdivision attests to the fact that any funds committed were not first provided to the Local Political Subdivision by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application, unless the Applicant itself is a Local Political Subdivision or subsidiary.

(B) Scoring. Points will be determined on a sliding scale based on the percentage of the Total Housing Development Costs of the Development, as reflected in the in the Development Cost Schedule. If a revised Development Cost Schedule is submitted to the Department in response to a deficiency notice at anytime during the review process, the Revised Development Cost Schedule will be utilized for this calculation, and Applicants will be notified of the revised score, consistent with subsection (e) of this section. Do not round for the following calculations. The "total contribution" is the total combined value of qualifying loan(s), grants or in-kind contributions from a Local Political Subdivision pursuant to subparagraph (A) of this paragraph.

(i) A total contribution equal to or greater than 1% of the Total Housing Development Cost of the Development receives 6 points; or

(ii) A total contribution equal to or greater than 2.5% of the Total Housing Development Cost of the Development receives 12 points; or

(iii) A total contribution equal to or greater than 5% of the Total Housing Development Cost of the Development receives 18 points.

(6) The Level of Community Support from State Representative or State Senator. The level of community support for the Application, evaluated on the basis of written statements received from the State Representative or State Senator that represents the district containing the proposed Development Site. (§2306.6710(b)(1)(F) and (f); §2306.6725(a)(2)). Applications may qualify to receive 14 points for this item. Letters of support must identify the specific Development and must clearly state support for or opposition to the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative or Senator by April 1, 2008. State Representatives or Senators to be considered are those State Representatives or Senators in office at the time the Application is submitted. Letters of support from State Representatives or Senators that do not represent the district containing the proposed Development Site will not qualify for points under this Exhibit. Neutral letters, or letters that do not specifically refer to the Development, will receive neither positive nor negative points. Letters from State of Texas Representative or Senator: support letters are +14 points; opposition letters are -14 points for a maximum of either 14 or -14 points. If one letter is received in support and one letter is received in opposition the score would be 0 points.

(7) The Rent Levels of the Units. Applications may qualify to receive up to 12 points for qualifying under this exhibit. (§2306.6710(b)(1)(G)). If 80% or fewer of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 7 points. If between 81% and 85% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 8 points. If between 86% and 90% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 9 points. If between 91% and 95% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 10 points. If greater than 95% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 12 points.

(8) The Cost of the Development by Square Foot (Development Characteristics). Applications may qualify to receive 10 points for this item. (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)). For this exhibit, costs shall be defined as construction costs, including site work, direct hard costs, contingency, contractor profit, overhead and general requirements, as represented in the Development Cost Schedule. This calculation does not include indirect construction costs. The calculation will be costs per square foot of net rentable area (NRA). For the purposes of this paragraph only, if the proposed Development is an elevator building serving elderly, a single room occupancy Development,

or a high rise building serving any population, the NRA may include elevator served interior corridors. The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule of the Application. Developments qualify for 10 points if their costs do not exceed $85 per square foot for Qualified Elderly, single family design, transitional, and single room occupancy Developments (transitional housing for the homeless and single room occupancy units as provided in the Code, §42(i)(3)(B)(iii) and (iv)), unless located in a "First Tier County" in which case their costs do not exceed $87 per square foot; and $75 for all other Developments, unless designated as "First Tier" by the Texas Department of Insurance, in which case their costs do not exceed $77 per square foot. For 2007, the First Tier counties are Aransas, Brazoria, Calhoun, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, San Patricio, and Willacy. There are also specifically designated First Tier communities in Harris County that are east of State Highway 146, and evidence in the Application must include a map with the Development site designated clearly within the community. These communities are Pasadena, Morgan's Point, Shoreacres, Seabrook and La Porte. Intergenerational Developments will receive 10 points if costs described above do not exceed the square footage limit for elderly and non-elderly units as determined by using the NRA attributable to the respective elderly and non-elderly units. The Department will determine if points will be awarded by multiplying the NRA for elderly units by the applicable square footage limit for the elderly units and adding that total to the result of the multiplication of the NRA for family units by the applicable non-elderly square footage limit. If this maximum cost amount is equal to, or greater than the total of the costs identified above for the Application, points will be awarded (10 points).

(9) The Services to be Provided to Tenants of the Development. Applications may qualify to receive up to 8 points. (§2306.6710(b)(1)(I); §2306.6725(a)(1); General Appropriation Act, Article VII, Rider 7)

(A) The Applicant must certify that the Development will provide a combination of special supportive services appropriate for the proposed tenants. The provision of supportive services will be included in the LURA as selected from the list of services identified in this paragraph. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to off-site services must be provided (maximum of 7 points).

(i) Applications will be awarded points for selecting services listed in clause (ii) of this subparagraph based on the following scoring range:

(I) Two points will be awarded for providing two of the services; or

(II) Four points will be awarded for providing four of the services; or

(III) Seven points will be awarded for providing six of the services.

(ii) Service options include child care; transportation; basic adult education; legal assistance; counseling services; GED preparation; English as a second language classes; vocational training; home buyer education; credit counseling; financial planning assistance or courses; health screening services; health and nutritional courses; organized team sports programs or youth programs; scholastic tutoring; any other programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601 et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of out-of wedlock pregnancies; and encourages the formation and maintenance of two-parent families; or any other services approved in writing by the Department.

(B) In addition, Applications will receive 1 point for providing Notary Public Services to tenants at no cost to the tenant. This will be included in the LURA.

(10) Declared Disaster Areas. Applications may receive 7 points, if at time the complete Application is submitted or at any time within the two-year period preceding the date of submission, the proposed Development site is located in a Disaster Area as defined in §50.3 of this chapter.

(11) Rehabilitation, (which includes reconstruction) or Adaptive Reuse. Applications may qualify to receive 6 points. Applications proposing to build solely Rehabilitation (excluding New Construction of non-residential buildings), solely reconstruction (excluding New Construction of non-residential buildings), or solely Adaptive Reuse qualify for points.

(12) Housing Needs Characteristics. (§42(m)(1)(C)(ii)). Applications may qualify to receive up to 6 points. Each Application may receive a score if correctly requested in the self score form based on objective measures of housing need in the Area where the Development is located. This Affordable Housing Need Score for each Area will be published in a Site Demographic Characteristics table in the Reference Manual.

(13) Development Includes the Use of Existing Housing as part of a Community Revitalization Plan (Development Characteristics). Applications may qualify to receive 6 points for this item. (§42(m)(1)(C)(iii)). The Development is an Existing Residential Development and proposed any Rehabilitation or any Reconstruction that is part of a Community Revitalization Plan. Evidence of the Community Revitalization Plan and a letter from the governing body stating that the Development Site is located within the targeted development areas outlined in the Community Revitalization Plan must be submitted.

(14) Pre-Application Participation Incentive Points. (§2306.6704) Applications that submitted a Pre-Application during the Pre-Application Acceptance Period and meet the requirements of this paragraph will qualify to receive 6 points for this item. To be eligible for these points, the Application must:

(A) Be for the identical Development Site, or reduced portion of the Development Site as the proposed Development Site under control in the Pre-Application;

(B) Have met the Pre-Application Threshold Criteria;

(C) Be serving the same target population (family, Intergenerational Housing, or elderly) as in the Pre-Application;

(D) Be serving the same target Set-Asides as indicated in the Pre-Application (Set-Asides can be dropped between Pre-Application and Application, but no Set-Asides can be added); and

(E) Be awarded by the Department an Application score that is not more than 5% greater or less than the number of points awarded by the Department at Pre-Application, with the exclusion of points for support and opposition under paragraphs (2), (6), and (18) of this of this subsection. The Application score used to determine whether the Application score is 5% greater or less than the number of points awarded at Pre-Application will also include all point losses under subsection (d)(4) of this section. An Applicant must choose, at the time of Application either clause (i) or (ii) of this subparagraph:

(i) To request the Pre-Application points and have the Department cap the Application score at no greater than the 5%

increase regardless of the total points accumulated in the scoring evaluation. This allows an Applicant to avoid penalty for increasing the point structure outside the 5% range from Pre-Application to Application; or

(ii) To request that the Pre-Application points be forfeited and that the Department evaluate the Application as requested in the self-scoring sheet.

(15) Economic Development Initiatives. A Development that is located in one of the following two areas may qualify to receive 4 points. For the purpose of this paragraph, "area" shall mean the boundaries of any zone or community in subparagraph (A) or the area in which funds in subparagraph (B) of this paragraph must be used:

(A) a Designated State or Federal Empowerment/Enterprise Zone, Urban Enterprise Community, or Urban Enhanced Enterprise Community. To be eligible for these points, Applicants must submit a letter and a map from a city/county official stating that the proposed Development is located within such a designated zone or area; is eligible to receive the state or federal economic development grants or loans; and the city/county still has available funds. The letter should be no older than 6 months from the first day of the Application Acceptance Period. (VII, Rider 6; §2306.127); or

(B) an area that has received an award as of November 1, 2007, within the past three years from the Texas Capital Fund, Texas or Federal Enterprise Zone Fund, Texas Leverage Fund, Industrial Revenue Bond Program, Emerging Technologies, Skills Development, Rural Business Enterprise Grants, Certified Development Company Loans, or Micro Loan Program. Grants that qualify in these areas are included in the Application Reference Manual.

(C) Points under subparagraphs (A) and (B) of this paragraph will not be granted if more than 3 tax credit Developments have been awarded in that area in the last 7 years. The Applicant must provide evidence of the boundaries of the area, as required in the Application and Application Submission Procedures Manual.

(16) Development Location. (§2306.6725(a)(4)); §42(m)(1)(C)(i)). Applications may qualify to receive 4 points. Evidence, not more than 6 months old from the first day of the Application Acceptance Period, that the Development Site is located within one of the geographical areas described in subparagraphs (A) - (E) of this paragraph. Areas qualifying under any one of the subparagraphs (A) - (E) of this paragraph will receive 4 points. An Application may only receive points under one of the subparagraphs (A) - (E) of this paragraph.

(A) A geographical Area which is an Economically Distressed Area; a Colonia; or a Difficult Development Area (DDA) as specifically designated by the Secretary of HUD at the time of Application submission (§2306.127)

(B) The Development is located in a county that has received an award as of November 1, 2007, within the past three years, from the Texas Department of Agriculture's Rural Municipal Finance Program or Real Estate Development and Infrastructure Program. Cities which have received one of these awards are categorized as awards to the county as a whole so Developments located in a different city than the city awarded, but in the same county, will still be eligible for these points.

(C) The Development is located in a census tract which has a median family income (MFI), as published by the United States Bureau of the Census (U.S. Census), that is higher than the median family income for the county in which the census tract is located. This comparison shall be made using the most recent data available as of the date the Application Round opens the year preceding the applicable program year. Developments eligible for these points must submit evidence documenting the median income for both the census tract and the county. These Census Tracts are outlined in the 2007 Housing Tax Credit Site Demographic Characteristics Report.

(D) The proposed Development will serve families with children (at least 70% of the Units must have an eligible bedroom mix of two bedrooms or more) and is proposed to be located in an elementary school attendance zone of an elementary school that has an academic rating of "Exemplary" or "Recognized," or comparable rating if the rating system changes. The date for consideration of the attendance zone is that in existence as of the opening date of the Application Round and the academic rating is the most current rating determined by the Texas Education Agency as of that same date. (§42(m)(1)(C)(vii))

(E) The proposed Development will expand affordable housing opportunities for low-income families with children outside of poverty areas. This must be demonstrated by showing that the Development will serve families with children (at least 70% of the Units must have an eligible bedroom mix of two bedrooms or more) and that the census tract in which the Development is proposed to be located has no greater than 10% poverty population according to the most recent census data. Intergenerational Developments may qualify for points if 70% of the non-elderly Units in the Development have an eligible bedroom mix of two bedrooms or more. (§42(m)(1)(C)(vii)). These Census Tracts are outlined in the 2008 Housing Tax Credit Site Demographic Characteristics Report.

(17) Development Location in non-urban Areas. §42(m)(1)(C)(i)). Applications may qualify to receive 6 points if the Development is not located in a Rural Area and has a population less than 100,000 based on the most current Decennial Census.

(18) Demonstration of Community Support other than Quantifiable Community Participation: If an Applicant requests these points on the self scoring form and correctly certifies to the Department that there are no Neighborhood Organizations that meet the Department's definition of Neighborhood Organization pursuant to §50.3(63) of this chapter and 12 points were awarded under paragraph (2) of this subsection, then that Applicant may receive two points for each letter of support submitted from a community or civic organization that serves the community in which the site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. The community or civic organization must provide some documentation of its existence in the community in which the Development is located to include, but not be limited to, listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that are not active in the area that includes the location of the Development will not be counted. For purposes of this item, community and civic organizations do not include neighborhood organizations, governmental entities, taxing entities or educational activities. Organizations that were created by a governmental entity or derive their source of creation from a governmental entity do not qualify under this item. For purposes of this item, educational activities include school districts, trade and vocational schools, charter schools and depending on how characterized could include day care centers; it would not include a PTA or PTO as that is a service organization even though it supports an educational activity. Letters of support received after February 29, 2008, will not be accepted for this item. Two points will be awarded for each letter of support submitted in the Application, not to exceed 6 points. Should an Applicant elect this option and the Application receives letters in opposition by February 29, 2008, then two points will be subtracted from the score for each letter in opposition, provided that the letter is from an organization serving the community. At no

time will the Application, however, receive a score lower than zero for this item.

(19) Developments in Census Tracts with No Other Existing Same Type Developments Supported by Tax Credits: The Application may receive 6 points if the proposed Development is located in a census tract in which there are no other existing Developments supported by Housing Tax Credits that serve the same type of household, regardless of whether the development serves families, or elderly individuals (Intergenerational Housing is not a type of household as it relates to this paragraph). Applicant must provide evidence of the census tract in which the Development is located. (§2306.6725(b)(2)). These Census Tracts are outlined in the 2008 Housing Tax Credit Site Demographic Characteristics Report.

(20) Tenant Populations with Special Housing Needs. Applications may qualify to receive 4 points for this item. (§42(m)(1)(C)(v)). The Department will award these points to Applications in which at least 10% of the Units are set aside for Persons with Special Needs. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require a minimum 12 month period during which Units must either be occupied by Persons with Special Needs or held vacant. The 12 month period will begin on the date each building receives its certificate of occupancy. For buildings that do not receive a Certificate of Occupancy, the 12 month period will begin on the placed in service date as provided in the Cost Certification manual. After the 12 month period, the owner will no longer be required to hold Units vacant for households with special needs, but will be required to continue to affirmatively market Units to household with special needs.

(21) Length of Affordability Period. Applications may qualify to receive up to 4 points. (§2306.6725(a)(5); §2306.111(g)(3)(C); §2306.185(a)(1) and (c); §2306.6710(e)(2); §42(m)(1)(B)(ii)(II)). In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Development Owners that are willing to extend the affordability period for a Development beyond the 30 years required in the Code may receive points as follows:

(A) Add 5 years of affordability after the extended use period for a total affordability period of 35 years (2 points); or

(B) Add 10 years of affordability after the extended use period for a total affordability period of 40 years. (4 points)

(22) Site Characteristics. Development Sites, including scattered sites, will be evaluated based on proximity to amenities, the presence of positive site features and the absence of negative site features. Sites will be rated based on the criteria in subparagraphs (A) and (B) of this paragraph.

(A) Proximity of site to amenities. Developments Sites located within a one mile radius (two-mile radius for Developments competing for a Rural Regional Allocation) of at least three services appropriate to the target population will receive four points. A site located within one-quarter mile of public transportation that is accessible to all residents including Persons With Disabilities and/or located within a community that has "on demand" transportation, special transit service, or specialized elderly transportation for Qualified Elderly Developments, will receive full points regardless of the proximity to amenities, as long as the Applicant provides appropriate evidence of the transportation services used to satisfy this requirement. If a Development is providing its own specialized van or on demand service, then this will be a requirement of the LURA. Only one service of each type listed in clauses (i) - (xiv) of this subparagraph will count towards the points. A map must be included identifying the Development Site and the location of the services. The services must be identified by name on the map. If the services are not identified by name, points will not be awarded. All services must exist or, if under construction, must be at least 50% complete by the date the Application is submitted. (4 points)

(i) Full service grocery store or supermarket.

(ii) Pharmacy.

(iii) Convenience Store/Mini-market.

(iv) Department or Retail Merchandise Store.

(v) Bank/Credit Union.

(vi) Restaurant (including fast food).

(vii) Indoor public recreation facilities, such as civic centers, community centers, and libraries.

(viii) Outdoor public recreation facilities such as parks, golf courses, and swimming pools.

(ix) Hospital/medical clinic.

(x) Medical offices (physician, dentistry, optometry).

(xi) Public Schools (only eligible for Developments that are not Qualified Elderly Developments).

(xii) Senior Center.

(xiii) Dry cleaners.

(xiv) Family video rental (Blockbuster, Hollywood Video, Movie Gallery).

(B) Negative Site Features. Development Sites with the following negative characteristics will have points deducted from their score. For purpose of this exhibit, the term 'adjacent' is interpreted as sharing a boundary with the Development Site. The distances are to be measured from all boundaries of the Development Site to all boundaries of the property containing the negative site feature. If an Applicant negligently fails to note a negative feature, double points will be deducted from the score or the Application may be terminated. If none of these negative features exist, the Applicant must sign a certification to that effect. (-5 points)

(i) Developments located adjacent to or within 300 feet of junkyards will have 1 point deducted from their score.

(ii) Developments located adjacent to or within 300 feet of active railroad tracks will have 1 point deducted from their score, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail. Rural Developments funded through TRDO-USDA are exempt from this point deduction.

(iii) Developments located adjacent to or within 300 feet of heavy industrial uses such as manufacturing plants will have 1 point deducted from their score.

(iv) Developments located adjacent to or within 300 feet of a solid waste or sanitary landfills will have 1 point deducted from their score.

(v) Developments where the buildings are located within the "fall line" of high voltage transmission power lines will have 1 point deducted from their score.

(vi) Developments where the buildings are located adjacent to or within 300 feet of a sexually oriented business will have 1

point deducted from their score. For the purpose of this clause, sexually oriented business shall be defined as stated in §243.002 of the Texas Government Code.

(vii) Developments where the buildings are located within the accident zones or clear zones for commercial or military airports will have 1 point deducted from their score.

(23) Development Size. The Development consists of not more than 36 Units (3 points).

(24) Qualified Census Tracts with Revitalization. Applications may qualify to receive 1 point for this item. (§42(m)(1)(B)(ii)(III)). Applications will receive the points for this item if the Development is located within a Qualified Census Tract and contributes to a concerted Community Revitalization Plan. Evidence of the Community Revitalization Plan and a letter from the governing body stating that the Development Site is located within the targeted development areas outlined in the Community Revitalization Plan must be submitted.

(25) Sponsor Characteristics. Applications may qualify to receive a maximum of 2 points for this item for qualifying under either subparagraph (A) or (B) of this paragraph. (§42(m)(1)(C)(iv))

(A) An Application will receive these two points for submitting a plan to use Historically Underutilized Businesses in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Applicant will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609.

(B) An Application will receive these points if there is evidence that a HUB that does not meet the experience requirements under subsection (g) of this section, as certified by the Texas Facilities Commission, has at least 51% ownership interest in the General Partner and materially participates in the Development and operation of the Development throughout the Compliance Period. To qualify for these points, the Applicant must submit a certification from the Texas Facilities Commission that the Person is a HUB at the close of the Application Acceptance Period. The HUB will be disqualified from receiving these points if any Principal of the HUB has developed, and received 8609's for, more than two Developments involving tax credits. Additionally, to qualify for these points, the HUB must partner with an experienced Developer (as defined by subsection (g) of this section); the experienced Developer, as an Affiliate, will not be subject to the credit limit described under §50.6(d) of this chapter for one Application per Application Round. For purposes of this section the experienced Developer may not be a Related Party to the HUB.

(26) Developments Intended for Eventual Tenant Ownership - Right of First Refusal. Applications may qualify to receive 1 point for this item. (§2306.6725(b)(1)); (§42(m)(1)(C)(viii)). Evidence that Development Owner agrees to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period for the minimum purchase price provided in, and in accordance with the requirements of, §42(i)(7) of the Code (the "Minimum Purchase Price"), to a Qualified Nonprofit Organization, the Department, or either an individual tenant with respect to a single family building, or a tenant cooperative, a resident management corporation in the Development or other association of tenants in the Development with respect to multifamily developments (together, in all such cases, including the tenants of a single family building, a "Tenant Organization"). Development Owner may qualify for these points by providing the right of first refusal in the following terms.

(A) Upon the earlier to occur of:

(i) The Development Owner's determination to sell the Development; or

(ii) The Development Owner's request to the Department, pursuant to §42(h)(6)(E)(II) of the Code, to find a buyer who will purchase the Development pursuant to a "qualified contract" within the meaning of §42(h)(6)(F) of the Code, the Development Owner shall provide a notice of intent to sell the Development ("Notice of Intent") to the Department and to such other parties as the Department may direct at that time. If the Development Owner determines that it will sell the Development at the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to expiration of the Compliance Period. If the Development Owner determines that it will sell the Development at some point later than the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to date upon which the Development Owner intends to sell the Development.

(B) During the two years following the giving of Notice of Intent, the Sponsor may enter into an agreement to sell the Development only in accordance with a right of first refusal for sale at the Minimum Purchase Price with parties in the following order of priority:

(i) During the first six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization that is also a community housing development organization, as defined for purposes of the federal HOME Investment Partnerships Program at 24 C.F.R. §92.1 (a "CHDO") and is approved by the Department,

(ii) During the second six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization or a Tenant Organization; and

(iii) During the second year after the Notice of Intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a Tenant Organization approved by the Department.

(iv) If, during such two-year period, the Development Owner shall receive an offer to purchase the Development at the Minimum Purchase Price from one of the organizations designated in clauses (i) - (iii) of this subparagraph (within the period(s) appropriate to such organization), the Development Owner shall sell the Development at the Minimum Purchase Price to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at the Minimum Purchase Price from one or more of the organizations designated in clauses (i) - (iii) of this subparagraph (within the period(s) appropriate to such organizations), the Development Owner shall sell the Development at the Minimum Purchase Price to whichever of such organizations it shall choose.

(C) After whichever occurs the later of:

(i) The end of the Compliance Period; or

(ii) Two years from delivery of a Notice of Intent, the Development Owner may sell the Development without regard to any right of first refusal established by the LURA if no offer to purchase the Development at or above the Minimum Purchase Price has been made by a Qualified Nonprofit Organization, a Tenant Organization or the Department, or a period of 120 days has expired from the date of acceptance of all such offers as shall have been received without the sale having occurred, provided that the failure(s) to close within any such 120-day period shall not have been caused by the Development Owner or matters related to the title for the Development.

(D) At any time prior to the giving of the Notice of Intent, the Development Owner may enter into an agreement with one or

more specific Qualified Nonprofit Organizations and/or Tenant Organizations to provide a right of first refusal to purchase the Development for the Minimum Purchase Price, but any such agreement shall only permit purchase of the Development by such organization in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(E) The Department shall, at the request of the Development Owner, identify in the LURA a Qualified Nonprofit Organization or Tenant Organization which shall hold a limited priority in exercising a right of first refusal to purchase the Development at the Minimum Purchase Price, in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(F) The Department shall have the right to enforce the Development Owner's obligation to sell the Development as herein contemplated by obtaining a power-of-attorney from the Development Owner to execute such a sale or by obtaining an order for specific performance of such obligation or by such other means or remedy as shall be, in the Department's discretion, appropriate.

(27) Leveraging of Private, State, and Federal Resources. Applications may qualify to receive 1 point for this item. (§2306.6725(a)(3)). Funding sources used for points under paragraph (5) of this subsection, may not be used for this point item.

(A) Evidence must be submitted in the Application that the proposed Development has received or will receive loan(s), grant(s) or in-kind contributions from a private, state or federal resource, which include Capital Grant Funds and HOPE VI funds, that is equal to or greater than 2% (not using normal rounding) of the Total Housing Development Costs reflected in the Application.

(B) For in-kind contributions, evidence must be submitted in the Application from a private, state or federal resource which substantiates the value of the in-kind contributions. Development based rental subsidies from private, state or federal resource may qualify under this section if evidence of the remaining value of the contract is submitted from the source. The value of the contract does not include past subsidies.

(C) Qualifying funds awarded through local entities may qualify for points if the original source of the funds is from a private, state or federal source. If qualifying funds awarded through local entities are used for this item, a statement from the local entity must be provided that identifies the original source of funds.

(D) Applicants may only submit enough sources to substantiate the point request, and all sources must be included in the Sources and Uses form. For example, two sources may be submitted if each is for an amount equal to 1% of the Total Housing Development Cost. However, two sources may not be submitted if each source is for an amount equal to 2% of the Total Housing Development Cost.

(E) The funding must be in addition to the primary funding (construction and permanent loans) that is proposed to be utilized and cannot be issued from the same primary funding source or an affiliated source. The provider of the funds must attest to the fact that they are not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and attest that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application, unless the Applicant itself is a Local Political Subdivision.

(F) The Development must have already applied for funding from the funding entity. Evidence to be submitted with the Application must include a copy of the commitment of funds or a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received. At the time the executed Commitment Notice is required to be submitted, the Applicant or Development Owner must provide evidence of a commitment approved by the governing body of the entity for the sufficient financing to the Department. If the funding commitment from the private, state or federal source, or qualifying substitute source, has not been received by the date the Department's Commitment Notice is to be submitted, the Application will be evaluated to determine if the loss of these points would have resulted in the Department's not committing the tax credits. If the loss of points would have made the Application noncompetitive, the Commitment Notice will be rescinded and the credits reallocated. If the Application would still be competitive even with the loss of points and the loss would not have impacted the recommendation for an award, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the commitment from the private, state or federal source, the Commitment Notice will be rescinded and the credits reallocated. Funds from the Department's HOME and Housing Trust Fund sources will only qualify under this category if there is a Notice of Funding Availability (NOFA) out for available funds and the Applicant is eligible under that NOFA.

(G) To qualify for this point, the Rent Schedule must show that at least 3% (not using normal rounding) of all low-income Units are designated to serve individuals or families with incomes at or below 30% of AMGI.

(28) Third-Party Funding Commitment Outside of Qualified Census Tracts. Applications may qualify to receive 1 point for this item. (§2306.6710(e)(1)). Evidence that the proposed Development has documented and committed Third-Party funding sources and the Development is located outside of a Qualified Census Tract. The provider of the funds must attest to the fact that they are not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and attest that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application. The commitment of funds (an application alone will not suffice) must already have been received from the Third-Party funding source and must be equal to or greater than 2% (not using normal rounding) of the Total Development Costs reflected in the Application. Funds from the Department's HOME and Housing Trust Fund sources will not qualify under this category. The Third-Party funding source cannot be a loan from a commercial lender.

(29) Scoring Criteria Imposing Penalties. (§2306.6710(b)(2))

(A) Penalties will be imposed on an Application if the Applicant has requested an extension of the Carryover or 10% Test deadline, and did not meet the original submission deadline, relating to Developments receiving a Housing Tax Credit commitment made in the Application Round preceding the current round. For each extension request made, the Applicant will receive a 5 point deduction. No penalty points or fees will be deducted for extensions that were requested on Developments that involved Rehabilitation when the Department is the primary lender, or for Developments that involve TRDO-USDA as a lender if TRDO-USDA or the Department is the cause for the Applicant not meeting the deadline.

(B) Penalties will be imposed on an Application if the Developer or Principal of the Applicant has been removed by the lender, equity provider, or limited partners in the past five years for failure to perform its obligations under the loan documents or limited partnership agreement. An affidavit will be provided by the Applicant and the Developer certifying that they have not been removed as described, or requiring that they disclose each instance of

removal with a detailed description of the situation. If an Applicant or Developer submits the affidavit, and the Department learns at a later date that a removal did take place as described, then the Application will be terminated and any Allocation made will be rescinded. The Applicant, Developers or Principals of the Applicant that are in court proceedings at the time of Application must disclose this information and the situation will be evaluated on a case-by-case basis. 3 points will be deducted for each instance of removal.

(C) Penalties will be imposed on an Application if Developer or Principal of the Applicant violates the Adherence to Obligations pursuant to subsection (c) of this section.

(j) Tie Breaker Factors.

(1) In the event that two or more Applications receive the same number of points in any given Set-Aside category, Rural Regional Allocation or Urban Regional Allocation, or Uniform State Service Region, and are both practicable and economically feasible, the Department will utilize the factors in this paragraph, in the order they are presented, to determine which Development will receive a preference in consideration for a tax credit commitment.

(A) Applications involving any Rehabilitation or Reconstruction of existing Units will win this first tier tie breaker over Applications involving solely New Construction or Adaptive Reuse.

(B) The Application located in the municipality or, if located outside a municipality, the county that has the lowest state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins as reflected in the Reference Manual will win this second tier tie breaker.

(C) The amount of requested tax credits per net rentable square foot (the lower credits per square foot has preference).

(D) Projects that are intended for eventual tenant ownership. Such Developments must utilize a detached single family site plan and building design and have a business plan describing how the project will convert to tenant ownership at the end of the 15-year compliance period.

(2) This paragraph identifies how ties will be handled when dealing with the restrictions on location identified in §50.5(a)(8) of this chapter, and in dealing with any issues relating to capture rate calculation. When two Tax-Exempt Bond Developments would violate one of these restrictions, and only one Development can be selected, the Department will utilize the reservation docket number issued by the Texas Bond Review Board in making its determination. When two Competitive Housing Tax Credits Applications in the Application Round would violate one of these restrictions, and only one Development can be selected, the Department will utilize the tie breakers identified in paragraph (1) of this subsection. When a Tax-Exempt Bond Development and a Competitive Housing Tax Credit Application in the Application Round would both violate a restriction, the following determination will be used:

(A) Tax-Exempt Bond Developments that receive their reservation from the Bond Review Board on or before April 30, 2008 will take precedence over the Housing Tax Credit Applications in the 2008 Application Round;

(B) Housing Tax Credit Applications approved by the Board for tax credits in July 2008 will take precedence over the Tax-Exempt Bond Developments that received their reservation from the Bond Review Board on or between May 1, 2008 and July 31, 2008; and

(C) After July 31, 2008, a Tax-Exempt Bond Development with a reservation from the Bond Review Board will take precedence over any Housing Tax Credit Application from the 2008 Application Round on the Waiting List. However, if no reservation has been issued by the date the Board approves an allocation to a Development from the Waiting List of Applications in the 2008 Application Round or a forward commitment, then the Waiting List Application or forward commitment will be eligible for its allocation.

(k) Staff Recommendations. (§2306.1112 and §2306.6731) After eligible Applications have been evaluated, ranked and underwritten in accordance with the QAP and the Rules, the Department staff shall make its recommendations to the Executive Award and Review Advisory Committee. The Committee will develop funding priorities and shall make commitment recommendations to the Board. Such recommendations and supporting documentation shall be made in advance of the meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed. The Committee will provide written, documented recommendations to the Board which will address at a minimum the financial or programmatic viability of each Application and a list of all submitted Applications which enumerates the reason(s) for the Development's proposed selection or denial, including all factors provided in §50.10(a) of this chapter that were used in making this determination.

§50.10. Board Decisions; Waiting List; Forward Commitments.

(a) Board Decisions. The Board's decisions shall be based upon the Department's and the Board's evaluation of the proposed Developments' consistency with the criteria and requirements set forth in this QAP and Rules.

(1) On awarding tax credits, the Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, and the reasons for any decision that conflicts with the recommendations made by Department staff. The Board may not make, without good cause, a commitment decision that conflicts with the recommendations of Department staff. Good cause includes the Board's decision to apply discretionary factors. (§2306.6725(c); §42(m)(1)(A)(iv); §2306.6731)

(2) In making a determination to allocate tax credits, the Board shall be authorized to not rely solely on the number of points scored by an Application. It shall in addition, be entitled to take into account, as it deems appropriate, the discretionary factors listed in this paragraph. The Board may also apply these discretionary factors to its consideration of Tax-Exempt Bond Developments. If the Board disapproves or fails to act upon an Application, the Department shall issue to the Applicant a written notice stating the reason(s) for the Board's disapproval or failure to act. In making tax credit decisions (including those related to Tax-Exempt Bond Developments), the Board, in its discretion, may evaluate, consider and apply any one or more of the following discretionary factors: (§2306.111(g)(3))

(A) The Developer market study;

(B) The location;

(C) The compliance history of the Developer;

(D) The financial feasibility;

(E) The appropriateness of the Development's size and configuration in relation to the housing needs of the community in which the Development is located;

(F) The Development's proximity to other low-income housing Developments;

(G) The availability of adequate public facilities and services;

(H) The anticipated impact on local school districts;

(I) Zoning and other land use considerations;

(J) Any matter considered by the Board to be relevant to the approval decision and in furtherance of the Department's purposes; and

(K) Other good cause as determined by the Board.

(3) Before the Board approves any Application, the Department shall assess the compliance history of the Applicant with respect to all applicable requirements; and the compliance issues associated with the proposed Development, including compliance information provided by the Texas State Affordable Housing Corporation. The Committee shall provide to the Board a written report regarding the results of the assessments. The written report will be included in the appropriate Development file for Board and Department review. The Board shall fully document and disclose any instances in which the Board approves a Development Application despite any noncompliance associated with the Development or Applicant. (§2306.057)

(b) Waiting List. (§2306.6711(c) and (d)). If the entire State Housing Credit Ceiling for the applicable calendar year has been committed or allocated in accordance with this chapter, the Board shall generate, concurrently with the issuance of commitments, a waiting list of additional Applications ranked by score in descending order of priority based on Set-Aside categories and regional allocation goals. The Board may also apply discretionary factors in determining the Waiting List. If at any time prior to the end of the Application Round, one or more Commitment Notices expire and a sufficient amount of the State Housing Credit Ceiling becomes available, the Board shall issue a Commitment Notice to Applications on the waiting list subject to the amount of returned credits, the regional allocation goals and the Set-Aside categories, including the 10% Nonprofit Set-Aside allocation and 15% At-Risk Set-Aside allocation and 5% TRDO-USDA Set-Aside required under the Code, §42(h)(5). At the end of each calendar year, all Applications which have not received a Commitment Notice shall be deemed terminated. The Applicant may re-apply to the Department during the next Application Acceptance Period.

(c) Forward Commitments. The Board may determine to issue commitments of tax credit authority with respect to Applications from the State Housing Credit Ceiling for the calendar year following the year of issuance (each a "forward commitment") to Applications submitted in accordance with the rules and timelines required under this rule and the Application Submission Procedures Manual. The Board will utilize its discretion in determining the amount of credits to be allocated as forward commitments and the reasons for those commitments considering score and discretionary factors. The Board may utilize the forward commitment authority to allocate credits to TRDO-USDA Developments which are experiencing foreclosure or loan acceleration at any time during the 2008 calendar year, also referred to as Rural Rescue Developments. Applications that are submitted under the 2008 QAP and granted a Forward Commitment of 2009 Housing Tax Credits are considered by the Board to comply with the 2009 QAP by having satisfied the requirements of this 2008 QAP, except for statutorily required QAP changes.

(1) Unless otherwise provided in the Commitment Notice with respect to a Development selected to receive a forward commitment, actions which are required to be performed under this chapter by a particular date within a calendar year shall be performed by such date in the calendar year of the Credit Ceiling from which the credits are allocated.

(2) Any forward commitment made pursuant to this section shall be made subject to the availability of State Housing Credit Ceiling in the calendar year with respect to which the forward commitment is made. If a forward commitment shall be made with respect to a Development placed in service in the year of such commitment, the forward commitment shall be a "binding commitment" to allocate the applicable credit dollar amount within the meaning of the Code, §42(h)(1)(C).

(3) If tax credit authority shall become available to the Department in a calendar year in which forward commitments have been awarded, the Department may allocate such tax credit authority to any eligible Development which received a forward commitment, in which event the forward commitment shall be canceled with respect to such Development.

§50.11. Required Application Notifications, Receipt of Public Comment, and Meetings with Applicants; Viewing of Pre-Applications and Applications; Confidential Information.

(a) Required Application Notifications, Receipt of Public Comment, and Meetings with Applicants.

(1) Within approximately 14 days after the close of the Pre-Application Acceptance Period, the Department shall publish a Pre-Application Submission Log on its web site. Such log shall contain the Development name, address, Set-Aside, number of Units, requested credits, owner contact name and phone number. (§2306.6717(a)(1))

(2) Approximately 30 days before the close of the Application Acceptance Period, the Department will release the evaluation and assessment of the Pre-Applications on its web site.

(3) Not later than 14 days after the close of the Pre-Application Acceptance Period, or Application Acceptance Period for Applications for which no Pre-Application was submitted, the Department shall: (§2306.1114)

(A) Publish an Application submission log on its web site.

(B) Give notice of a proposed Development in writing that provides the information required under clause (i) of this subparagraph to all of the individuals and entities described in clauses (ii) - (x) of this subparagraph. (§2306.6718(a)-(c))

(i) The following information will be provided in these notifications:

(I) The relevant dates affecting the Application including the date on which the Application was filed, the date or dates on which any hearings on the Application will be held and the date by which a decision on the Application will be made;

(II) A summary of relevant facts associated with the Development;

(III) A summary of any public benefits provided as a result of the Development, including rent subsidies and tenant services; and

(IV) The name and contact information of the employee of the Department designated by the director to act as the information officer and liaison with the public regarding the Application.

(ii) Presiding officer of the governing body of the political subdivision containing the Development (mayor or county judge) to advise such individual that the Development, or a part thereof, will be located in his/her jurisdiction and request any comments which such individual may have concerning such Development.

(iii) If the Department receives a letter from the mayor or county judge of an affected city or county that expresses opposition to the Development, the Department will give consideration to the objections raised and will offer to visit the proposed site or Development with the mayor or county judge or their designated representative within 30 days of notification. The site visit must occur before the Housing Tax Credit can be approved by the Board. The Department will obtain reimbursement from the Applicant for the necessary travel and expenses at rates consistent with the state authorized rate (General Appropriation Act, Article VII, Rider 5) (§42(m)(1));

(iv) Any member of the governing body of a political subdivision who represents the Area containing the Development. If the governing body has single-member districts, then only that member of the governing body for that district will be notified, however if the governing body has at-large districts, then all members of the governing body will be notified;

(v) State representative and state senator who represent the community where the Development is proposed to be located. If the state representative or senator host a community meeting, the Department, if timely notified, will ensure staff are in attendance to provide information regarding the Housing Tax Credit Program; (General Appropriation Act, Article VII, Rider 8(d))

(vi) United States representative who represents the community containing the Development;

(vii) Superintendent of the school district containing the Development;

(viii) Presiding officer of the board of trustees of the school district containing the Development;

(ix) Any Neighborhood Organizations on record with the city or county in which the Development is to be located and whose boundaries contain the proposed Development site or otherwise known to the Applicant or Department and on record with the state or county; and

(x) Advocacy organizations, social service agencies, civil rights organizations, tenant organizations, or others who may have an interest in securing the development of affordable housing that are registered on the Department's email list service.

(C) The Department shall maintain an electronic mail notification service that will notify a subscriber, by zip code, of: (§2306.67171)

(i) The receipt of a Pre-Application or Application within 14 days of receipt;

(ii) The publication of materials to be presented to the Board for the Pre-Application or Application referred to in clause (i) of this subparagraph; and

(iii) Any public hearing for the Pre-Application or Application referred to in clause (i) of this subparagraph.

(D) The elected officials identified in subparagraph (B) of this paragraph will be provided an opportunity to comment on the Application during the Application evaluation process. (§42(m)(1))

(4) The Department shall hold at least three public hearings in different Uniform State Service Regions of the state to receive comment on the submitted Applications and on other issues relating to the Housing Tax Credit Program for competitive Applications under the State Housing Credit Ceiling. (§2306.6717(c))

(5) The Department shall make available on the Department's website information regarding the Housing Tax Credit Program including notice of public hearings, meetings, Application Round opening and closing dates, submitted Applications, and Applications approved for underwriting and recommended to the Board, and shall provide that information to locally affected community groups, local and state elected officials, local housing departments, any appropriate newspapers of general or limited circulation that serve the community in which a proposed Development is to be located, nonprofit and for-profit organizations, on-site property managers of occupied Developments that are the subject of Applications for posting in prominent locations at those Developments, and any other interested persons including community groups, who request the information. (§2306.6717(b))

(6) Approximately forty days prior to the date of the July Board meeting at which the issuance of Commitment Notices shall be discussed, the Department will notify each Applicant of the receipt of any opposition received by the Department relating to his or her Development at that time.

(7) Not later than the third working day after the date of completion of each stage of the Application process, including the results of the Application scoring and underwriting phases and the commitment phase, the results will be posted to the Department's web site. (§2306.6717(a)(3))

(8) At least thirty days prior to the date of the July Board meeting at which the issuance of Commitment Notices shall be discussed, the Department will:

(A) Provide the Application scores to the Board; (§2306.6711(a))

(B) If feasible, post to the Department's web site the entire Application, including all supporting documents and exhibits, the Application Log as further described in §50.19(b) of this chapter, a scoring sheet providing details of the Application score, and any other documents relating to the processing of the Application. (§2306.6717(a)(1) and (2))

(9) A summary of comments received by the Department on specific Applications shall be part of the documents required to be reviewed by the Board under this subsection if it is received 30 business days prior to the date of the Board Meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed. Comments received after this deadline will not be part of the documentation submitted to the Board. However, a public comment period will be available prior to the Board's decision, at the Board meeting where tax credit commitment decisions will be made.

(10) Not later than the 120th day after the date of the initial issuance of Commitment Notices for Housing Tax Credits, the Department shall provide an Applicant who did not receive a commitment for Housing Tax Credits with an opportunity to meet and discuss with the Department the Application's deficiencies, scoring and underwriting. (§2306.6711(e))

(b) Viewing of Pre-Applications and Applications. Pre-Applications and Applications for tax credits are public information and are available upon request after the Pre-Application and Application Acceptance Periods close, respectively. All Pre-Applications and Applications, including all exhibits and other supporting materials, except Personal Financial Statements and Social Security numbers, will be made available for public disclosure after the Pre-Application and Application periods close, respectively. The content of Personal Financial Statements may still be made available for public disclosure upon request if the Attorney General's office deems it is not protected from disclosure by the Texas Public Information Act.

(c) Confidential Information. The Department may treat the financial statements of any Applicant as confidential and may elect not to disclose those statements to the public. A request for such information shall be processed in accordance with §552.305 of the Government Code. (§2306.6717(d))

§50.12. Tax-Exempt Bond Developments: Filing of Applications; Applicability of Rules; Supportive Services; Financial Feasibility Evaluation; Satisfaction of Requirements.

(a) Filing of Applications for Tax-Exempt Bond Developments. Applications for a Tax-Exempt Bond Development may be submitted to the Department as described in paragraphs (1) and (2) of this subsection:

(1) Applicants which receive advance notice of a Program Year 2008 reservation as a result of the Texas Bond Review Board's (TBRB) lottery for the private activity volume cap must file a complete Application not later than 12:00 p.m. on December 28, 2007. Such filing must be accompanied by the Application fee described in §50.20 of this chapter.

(2) Applicants which receive advance notice of a Program Year 2008 reservation after being placed on the waiting list as a result of the TBRB lottery for private activity volume cap must submit Volume 1 and Volume 2 of the Application and the Application fee described in §50.20 of this chapter prior to the Applicant's bond reservation date as assigned by the TBRB. Those Applications designated as Priority 3 by the TBRB must submit Volumes I and II within 14 days of the bond reservation date if the Applicant intends to apply for tax credits regardless of the Issuer. Any outstanding documentation required under this section regardless of Priority must be submitted to the Department at least 60 days prior to the Board meeting at which the decision to issue a Determination Notice would be made unless a waiver is requested by the Applicant. The Department staff will have limited discretion to recommend an Application with appropriate justification of the late submission.

(3) Applications involving multiple sites must submit the required information as outlined in the Application Submission Procedures Manual. The Application will be considered to be one Application as identified in Chapter 1372, Texas Government Code.

(b) Applicability of Rules for Tax-Exempt Bond Developments. Tax-Exempt Bond Development Applications are subject to all rules in this title, with the only exceptions being the following sections: §50.4 of this chapter (regarding State Housing Credit Ceiling), §50.7 of this chapter (regarding Regional Allocation and Set-Asides), §50.8 of this chapter (regarding Pre-Application), §50.9(d) and (f) of this chapter (regarding Evaluation Processes for Competitive Applications and Rural Rescue Applications), §50.9(i) of this chapter (regarding Selection Criteria), §50.10(b) and (c) of this chapter (regarding Waiting List and Forward Commitments), and §50.14(a) and (b) of this chapter (regarding Carryover and 10% Test). Such Developments requesting a Determination Notice in the current calendar year must meet all Threshold Criteria requirements stipulated in §50.9(h) of this chapter. Such Developments which received a Determination Notice in a prior calendar year must meet all Threshold Criteria requirements stipulated in the QAP and Rules in effect for the calendar year in which the Determination Notice was issued; provided, however, that such Developments shall comply with all procedural requirements for obtaining Department action in the current QAP and Rules; and such other requirements of the QAP and Rules as the Department determines applicable. This documentation must be submitted no later than 14 days before the Board meeting where the credits will be considered. Applicants will be required to meet all conditions of the Determination Notice by the time the construction loan is closed unless otherwise specified in the Determination Notice. Applicants must meet the requirements identified in §50.15 of this chapter. No later than 60 days following closing of the bonds, the Development Owner must also submit a Management Plan and an Affirmative Marketing Plan (as further described in the Carryover Allocation Procedures Manual), and evidence must be provided at this time of attendance of the Development Owner or management company at Department-approved Fair Housing training relating to leasing and management issues for at least five hours and the Development architect at Department-approved Fair Housing training relating to design issues for at least five hours. Certifications must not be older than two years. Applications that receive a reservation from the Bond Review Board on or before December 31, 2007 will be required to satisfy the requirements of the 2007 QAP; Applications that receive a reservation from the Bond Review Board on or after January 1, 2008 will be required to satisfy the requirements of the 2008 QAP.

(c) Supportive Services for Tax-Exempt Bond Developments. Tax-Exempt Bond Development Applications must provide an executed agreement with a qualified service provider for the provision of special supportive services that would otherwise not be available for the tenants. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to off-site services must be provided. The provision of these services will be included in the LURA. Acceptable services as described in paragraphs (1) - (3) of this subsection include:

(1) The services must be in at least one of the following categories: child care, transportation, notary public service, basic adult education, legal assistance, counseling services, GED preparation, English as a second language classes, vocational training, home buyer education, credit counseling, financial planning assistance or courses, health screening services, health and nutritional courses, organized team sports programs, youth programs, scholastic tutoring, social events and activities, community gardens or computer facilities;

(2) Any other program described under Title IV-A of the Social Security Act (42 U.S.C. §§601 et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of out-of wedlock pregnancies; and encourages the formation and maintenance of two-parent families, or

(3) Any other services approved in writing by the Issuer. The plan for tenant supportive services submitted for review and approval of the Issuer must contain a plan for coordination of services with state workforce development and welfare programs. The coordinated effort will vary depending upon the needs of the tenant profile at any given time as outlined in the plan.

(d) Financial Feasibility Evaluation for Tax-Exempt Bond Developments. Code §42(m)(2)(D) requires the bond issuer (if other than the Department) to ensure that a Tax-Exempt Bond Development does not receive more tax credits than the amount needed for the financial feasibility and viability of a Development throughout the Compliance Period. Treasury Regulations prescribe the occasions upon which this determination must be made. In light of the requirement, issuers may either elect to underwrite the Development for this purpose in accordance with the QAP and the Underwriting Rules and Guidelines, §1.32 of this title or request that the Department perform the function. If the issuer underwrites the Development, the Department will, nonetheless, review the underwriting report and may make such changes in the amount of credits which the Development may be allowed as are appropriate under the Department's guidelines. The Determination Notice issued by the Department and any subsequent IRS Form(s) 8609 will reflect the amount of tax credits for which the Development is determined to be eligible in accordance with this subsection, and the amount of tax

credits reflected in the IRS Form 8609 may be greater or less than the amount set forth in the Determination Notice, based upon the Department's and the bond issuer's determination as of each building's placement in service. Any increase of tax credits, from the amount specified in the Determination Notice, at the time of each building's placement in service will only be permitted if it is determined by the Department, as required by Code §42(m)(2)(D), that the Tax-Exempt Bond Development does not receive more tax credits than the amount needed for the financial feasibility and viability of a Development throughout the Compliance Period. Increases to the amount of tax credits that exceed 110% of the amount of credits reflected in the Determination Notice are contingent upon approval by the Board. Increases to the amount of tax credits that do not exceed 110% of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director.

(e) Satisfaction of Requirements for Tax-Exempt Bond Developments. If the Department staff determines that all requirements of this QAP and Rules have been met, the Department will recommend that the Board authorize the issuance of a Determination Notice. The Board, however, may utilize the discretionary factors identified in §50.10(a) of this chapter in determining if they will authorize the Department to issue a Determination Notice to the Development Owner. The Determination Notice, if authorized by the Board, will confirm that the Development satisfies the requirements of the QAP and Rules in accordance with the Code, §42(m)(1)(D).

(f) Certification of Tax Exempt Applications with New Docket Numbers. Applications that are processed through the Department review and evaluation process and receive an affirmative Board Determination, but do not close the bonds prior to the bond reservation expiration date, and subsequently have that docket number withdrawn from the Bond Review Board, may have their Determination Notice reinstated. The Applicant would need to receive a new docket number from the Texas Bond Review Board. One of the following must apply:

(1) The new docket number must be issued in the same program year as the original docket number and must not be more than four months from the date the original application was withdrawn from the BRB. The application must remain unchanged. This means that at a minimum, the following can not have changed: site control, total number of units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, target population, scoring criteria (TDHCA issues) or BRB priority status including the effect on the inclusive capture rate. Note that the entities involved in the Applicant entity and Developer can not change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as long as the financing structure and terms remain unchanged. Notifications under §50.9(h)(8) of this chapter are not required to be reissued. In the event that the Department's Board has already approved the Application for tax credits, the Application is not required to be presented to the Board again (unless there is public opposition) and a revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty days after the date the Bond Review Board issues the new docket number and no later than thirty days before the anticipated closing. In the event that the Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately provided to the Board for consideration. This certification must be submitted no later than thirty days after the date the Bond Review Board issues the new docket number and no later than forty-five days before the anticipated Department's Board meeting date.

(2) If there are changing to the Application as referenced in paragraph (1) of this subsection, the Application will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new determination notice to be issued.

§50.13. Commitment and Determination Notices; Agreement and Election Statement; Documentation Submission Requirements.

(a) Commitment and Determination Notices. If the Board approves an Application the Department will:

(1) If the Application is for a commitment from the State Housing Credit Ceiling, issue a Commitment Notice to the Development Owner which shall:

(A) Confirm that the Board has approved the Application; and

(B) 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 §50.16 of this chapter, and compliance by the Development Owner with the remaining requirements of this chapter and any other terms and conditions set forth therein by the Department. This commitment shall expire on the date specified therein unless the Development Owner indicates acceptance of the commitment by executing the Commitment Notice or Determination Notice, pays the required fee specified in §50.20 of this chapter, and satisfies any other conditions set forth therein by the Department. The Commitment Notice expiration date may not be extended.

(2) If the Application regards a Tax-Exempt Bond Development, issue a Determination Notice to the Development Owner which shall:

(A) Confirm the Board's determination that the Development satisfies the requirements of this QAP; and

(B) State the Department's commitment to issue IRS Form(s) 8609 to the Development Owner in a specified amount, subject to the requirements set forth in §50.12 of this chapter and compliance by the Development Owner with all applicable requirements of this chapter and any other terms and conditions set forth therein by the Department. The Determination Notice shall expire on the date specified therein unless the Development Owner indicates acceptance by executing the Determination Notice and paying the required fee specified in §50.20 of this chapter. The Determination Notice shall also expire unless the Development Owner satisfies any conditions set forth therein by the Department within the applicable time period.

(3) Notify, in writing, the mayor or other equivalent chief executive officer of the municipality in which the Property is located informing him/her of the Board's issuance of a Commitment Notice or Determination Notice, as applicable.

(4) 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, unless the Department staff make a recommendation to the Board based on the need to fulfill the goals of the Housing Tax Credit Program as expressed in this QAP and Rules, and the Board accepts the recommendation. The Department's recommendation to the Board shall be clearly documented.

(5) A Commitment or Determination Notice shall not be issued with respect to the Applicant, the Development Owner, the Gen-

eral Contractor, or any Affiliate of the General Contractor that is active in the ownership or Control of one or more other low-income rental housing properties in the state of Texas administered by the Department that is in Material Noncompliance with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for such property, as described in Chapter 60 of this title.

(6) The executed Commitment or Determination Notice must be returned to the Department on the date specified with the Commitment Notice or Determination Notice, which shall be no earlier than ten days of the effective date of the Notice.

(b) Agreement and Election Statement. Together with the Development Owner's acceptance of the Carryover Allocation, the Development Owner may execute an Agreement and Election Statement, in the form prescribed by the Department, for the purpose of fixing the Applicable Percentage for the Development as that for the month in which the Carryover Allocation was accepted (or the month the bonds were issued for Tax-Exempt Bond Developments), as provided in the Code, §42(b)(2). Current Treasury Regulations, §1.42-8(a)(1)(v), suggest that in order to permit a Development Owner to make an effective election to fix the Applicable Percentage for a Development, the Carryover Allocation Document must be executed by the Department and the Development Owner within the same month. The Department staff will cooperate with a Development Owner, as possible or reasonable; to assure that the Carryover Allocation Document can be so executed.

(c) Documentation Submission Requirements at Commitment of Funds. No later than the date the Commitment Notice or Determination Notice is executed by the Applicant and returned to the Department with the appropriate Commitment Fee as further described in §50.20(f) of this chapter, the following documents must also be provided to the Department. Failure to provide these documents may cause the Commitment to be rescinded. For each Applicant all of the following must be provided:

(1) Evidence that the entity has the authority to do business in Texas;

(2) A Certificate of Account Status from the Texas Comptroller of Public Accounts or, if such a Certificate is not available because the entity is newly formed, a statement to such effect; and a Certificate of Organization from the Secretary of State;

(3) Copies of the entity's governing documents, including, but not limited to, its Articles of Incorporation, Articles of Organization, Certificate of Limited Partnership, Bylaws, Regulations and/or Partnership Agreement; and

(4) Evidence that the signer(s) of the Application have the authority to sign on behalf of the Applicant in the form of a corporate resolution or by-laws which indicate same from the sub-entity in Control and that those Persons signing the Application constitute all Persons required to sign or submit such documents.

§50.14. Carryover; 10% Test; Commencement of Substantial Construction.

(a) Carryover. All Developments which received a Commitment Notice, and will not be placed in service and receive IRS Form 8609 in the year the Commitment Notice was issued, must submit the Carryover documentation to the Department no later than November 1 of the year in which the Commitment Notice is issued pursuant to §42(h)(I)(c) IRC. Commitments for credits will be terminated if the Carryover documentation, or an approved extension, has not been received by this deadline. In the event that a Development Owner intends to submit the Carryover documentation in any month preceding November of the year in which the Commitment Notice is issued, in order to fix the Applicable Percentage for the Development in that month, it must be submitted no later than the first Friday in the preceding month. If the financing structure, syndication rate, amount of debt or syndication proceeds are revised at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be reevaluated by the Department. The Carryover Allocation format must be properly completed and delivered to the Department as prescribed by the Carryover Allocation Procedures Manual. All Carryover Allocations will be contingent upon the following, in addition to all other conditions placed upon the Application in the Commitment Notice:

(1) The Development Owner for all New Construction and Adaptive Reuse Developments must have purchased the Development Site.

(2) A current original plat or survey of the land, prepared by a duly licensed Texas Registered Professional Land Surveyor. Such survey shall conform to standards prescribed in the Manual of Practice for Land Surveying in Texas as promulgated and amended from time to time by the Texas Surveyors Association as more fully described in the Carryover Procedures Manual.

(3) For all Developments involving New Construction or Adaptive Reuse, evidence of the availability of all necessary utilities/services to the Development site must be provided. Necessary utilities include natural gas (if applicable), electric, trash, water, and sewer. Such evidence must be a letter or a monthly utility bill from the appropriate municipal/local service provider. If utilities are not already accessible, then the letter must clearly state: an estimated time frame for provision of the utilities, an estimate of the infrastructure cost, and an estimate of any portion of that cost that will be borne by the Development Owner. Letters must be from an authorized individual representing the organization which actually provides the services. Such documentation should clearly indicate the Development property. If utilities are not already accessible (undeveloped areas), then the letter should not be older than three months from the first day of the Application Acceptance Period.

(4) The Department will not execute a Carryover Allocation Agreement with any Owner in Material Noncompliance on October 1, 2008.

(b) 10% Test. No later than six months from the date the Carryover Allocation Document is executed by the Department and the Development Owner, more than 10% of the Development Owner's reasonably expected basis must have been incurred pursuant to §42(h)(1)(E)(i) and (ii) of the Internal Revenue Code and Treasury Regulations, §1.42-6. The evidence to support the satisfaction of this requirement must be submitted to the Department no later than June 30 of the year following the execution of the Carryover Allocation Document in a format prescribed by the Department. At the time of submission of the documentation, the Development Owner must also submit a Management Plan and an Affirmative Marketing Plan as further described in the Carryover Allocation Procedures Manual. Evidence must be provided at this time of attendance of the Development Owner or management company at Department-approved Fair Housing training relating to leasing and management issues for at least five hours and the Development architect and engineer at Department-approved Fair Housing training relating to design issues for at least five hours on or before the time the 10% Test Documentation is submitted. Certifications must not be older than two years.

(c) Commencement of Substantial Construction. The Development Owner must submit evidence of having commenced and continued substantial construction activities as defined in Chapter 60 of this title. The evidence must be submitted not later than December 1 of

the year after the execution of the Carryover Allocation Document with the possibility of an extension as described in §50.20 of this chapter.

§50.15. LURA, Cost Certification.

(a) Land Use Restriction Agreement (LURA). The Development Owner must request a LURA from the Department no later than the date specified in Chapter 60 of this title, the Department's Compliance Rules. The Development Owner must date, sign and acknowledge before a notary public the LURA and send the original to the Department for execution. The initial compliance and monitoring fee must be accompanied by a statement, signed by the Owner, indicating the start of the Development's Credit Period and the earliest placed in service date for the Development buildings. After receipt of the signed LURA from the Department, the Development Owner shall then record the LURA, along with any and all exhibits attached thereto, in the real property records of the county where the Development is located and return the original document, duly certified as to recordation by the appropriate county official, to the Department no later than the date that the Cost Certification Documentation is submitted to the Department. If any liens (other than mechanics' or materialmen's liens) shall have been recorded against the Development and/or the Property prior to the recording of the LURA, the Development Owner shall obtain the subordination of the rights of any such lienholder, or other effective consent, to the survival of certain obligations contained in the LURA, which are required by §42(h)(6)(E)(ii) of the Code to remain in effect following the foreclosure of any such lien. Receipt of such certified recorded original LURA by the Department is required prior to issuance of IRS Form 8609. A representative of the Department, or assigns, shall physically inspect the Development for compliance with the Application and the representations, warranties, covenants, agreements and undertakings contained therein. Such inspection will be conducted before the IRS Form 8609 is issued for a building, but it shall be conducted in no event later than the end of the second calendar year following the year the last building in the Development is placed in service. The Development Owner for Tax-Exempt Bond Developments shall obtain a subordination agreement wherein the lien of the mortgage is subordinated to the LURA. The LURA shall contain any provision which requires the Development Owner to restrict rents and incomes at any AMGI level, as approved by the Board. The restricted gross rents for any AMGI level outlined in the LURA will be calculated in accordance with §42(g)(2)(A), Internal Revenue Code.

(b) Cost Certification. The Cost Certification Procedures Manual sets forth the documentation required for the Department to perform a feasibility analysis in accordance with §42(m)(2)(C)(i)(II), Internal Revenue Code, and determine the final Credit to be allocated to the Development.

(1) To request IRS Forms 8609, Developments must have:

(A) Placed in Service by December 31 of the year the Commitment Notice was issued if a Carryover Allocation was not requested and received; or December 31 of the second year following the year the Carryover Allocation Agreement was executed;

(B) Scheduled a final construction inspection in accordance with Chapter 60 of this title, the Department's Compliance Monitoring Policies and Procedures;

(C) Informed the Department of and received written approval for all Development amendments in accordance with §50.17(c) of this chapter;

(D) Submitted to the Department the LURA in accordance with subsection (a) of this section;

(E) Paid all applicable Department fees; and

(F) Prepared all Cost Certification documentation as more fully described in the Cost Certification Procedures Manual including:

(i) Carryover Allocation Agreement/Determination Notice and Election Statement;

(ii) Owner's Statement of Certification;

(iii) Owner Summary;

(iv) Evidence of Nonprofit and CHDO Participation;

(v) Evidence of Historically Underutilized Business (HUB) Participation;

(vi) Development Summary;

(vii) As-Built Survey;

(viii) Closing Statement;

(ix) Title Policy;

(x) Evidence of Placement in Service;

(xi) Independent Auditor's Reports;

(xii) Total Development Cost Schedule;

(xiii) AIA Form G702 and G703, Application and Certificate for Payment;

(xiv) Rent Schedule;

(xv) Utility Allowance;

(xvi) Annual Estimated Operating Expenses and 15-Year Proforma;

(xvii) Current Annual Operating Statement and Rent Roll;

(xviii) Final Sources of Funds;

(xix) Executed Limited Partnership Agreement;

(xx) Loan Agreement or Firm Commitment;

(xxi) Architect's Certification of Fair Housing Requirements; and

(xxii) TDHCA Compliance Workshop Certificate.

(2) Required Cost Certification documentation must be received by the Department no later than January 15 following the year the Credit Period begins. Any Developments issued a Commitment Notice or Determination Notice that fails to submit its Cost Certification documentation by this deadline will be reported to the IRS and the Owner will be required to submit a request for extension consistent with §50.20(l) of this chapter.

(3) The Department will perform an initial evaluation of the Cost Certification documentation within 45 days from the date of receipt and notify the Owner in a deficiency letter of all additional required documentation. Any deficiency letters issued to the Owner pertaining to the Cost Certification documentation will also be copied to the syndicator. The Department will issue IRS Forms 8609 no later than 90 days from the date that all required documents have been received.

(4) The Department will perform an evaluation to determine if the Applicant is in Material Noncompliance with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject property, as described in Chapter 60 of this title, prior to issuance of IRS Forms 8609.

§50.16. Housing Credit Allocations.

(a) In making a commitment of a Housing Credit Allocation under this chapter, the Department shall rely upon information contained in the Application to determine whether a building is eligible for the credit under the Code, §42. The Development Owner shall bear full responsibility for claiming the credit and assuring that the Development complies with the requirements of the Code, §42. The Department shall have no responsibility for ensuring that a Development Owner who receives a Housing Credit Allocation from the Department will qualify for the tax credit.

(b) The Housing Credit Allocation Amount shall not exceed the dollar amount the Department determines is necessary for the financial feasibility and the long term viability of the Development throughout the affordability period. (§2306.6711(b)). Such determination shall be made by the Department at the time of issuance of the Commitment Notice or Determination Notice; at the time the Department makes a Housing Credit Allocation; and as of the date each building in a Development is placed in service. Any Housing Credit Allocation Amount specified in a Commitment Notice, Determination Notice or Carryover Allocation Document is subject to change by the Department based upon such determination. Such a determination shall be made by the Department based on its evaluation and procedures, considering the items specified in the Code, §42(m)(2)(B), and the department in no way or manner represents or warrants to any Applicant, sponsor, investor, lender or other entity that the Development is, in fact, feasible or viable.

(c) The General Contractor hired by the Development Owner must meet specific criteria as defined by the General Appropriation Act, Article VII, Rider 8(c). A General Contractor hired by a Development Owner or a Development Owner, if the Development Owner serves as General Contractor must demonstrate a history of constructing similar types of housing without the use of federal tax credits. Evidence must be submitted to the Department, in accordance with §50.9(h)(4)(I) of this chapter, which sufficiently documents that the General Contractor has constructed some housing without the use of Housing Tax Credits. This documentation will be required as a condition of the Commitment Notice or Carryover Allocation Agreement, and must be complied with prior to commencement of construction and at cost certification and final allocation of credits.

(d) An allocation will be made in the name of the Development Owner identified in the related Commitment Notice or Determination Notice. If an allocation is made to a member or Affiliate of the ownership entity proposed at the time of Application, the Department will transfer the allocation to the ownership entity as consistent with the intention of the Board when the Development was selected for an award of tax credits. Any other transfer of an allocation will be subject to review and approval by the Department consistent with §50.17(c) of this chapter. The approval of any such transfer does not constitute a representation to the effect that such transfer is permissible under §42 of the Code or without adverse consequences thereunder, and the Department may condition its approval upon receipt and approval of complete current documentation regarding the owner including documentation to show consistency with all the criteria for scoring, evaluation and underwriting, among others, which were applicable to the original Applicant.

(e) The Department shall make a Housing Credit Allocation, either in the form of IRS Form 8609, with respect to current year allocations for buildings placed in service, or in the Carryover Allocation Document, for buildings not yet placed in service, to any Development Owner who holds a Commitment Notice which has not expired, and for which all fees as specified in §50.20 of this chapter have been received by the Department and with respect to which all applicable requirements, terms and conditions have been met. For Tax-Exempt Bond Developments, the Housing Credit Allocation shall be made in the form of a Determination Notice. For an IRS Form 8609 to be issued with respect to a building in a Development with a Housing Credit Allocation, satisfactory evidence must be received by the Department that such building is completed and has been placed in service in accordance with the provisions of the Department's Cost Certification Procedures Manual. The Cost Certification documentation requirements will include a certification and inspection report prepared by a Third-Party accessibility specialist to certify that the Development meets all required accessibility standards. IRS Form 8609 will not be issued until the certifications are received by the Department. The Department shall mail or deliver IRS Form 8609 (or any successor form adopted by the Internal Revenue Service) to the Development Owner, with Part I thereof completed in all respects and signed by an authorized official of the Department. The delivery of the IRS Form 8609 will occur only after the Development Owner has complied with all procedures and requirements listed within the Cost Certification Procedures Manual. Regardless of the year of Application to the Department for Housing Tax Credits, the current year's Cost Certification Procedures Manual must be utilized when filing all cost certification materials. A separate Housing Credit Allocation shall be made with respect to each building within a Development which is eligible for a tax credit; provided, however, that where an allocation is made pursuant to a Carryover Allocation Document on a Development basis in accordance with the Code, §42(h)(1)(F), a housing credit dollar amount shall not be assigned to particular buildings in the Development until the issuance of IRS Form 8609s with respect to such buildings. The Department may delay the issuance of IRS Form 8609 if any Development violates the representations of the Application.

(f) In making a Housing Credit Allocation, the Department shall specify a maximum Applicable Percentage, not to exceed the Applicable Percentage for the building permitted by the Code, §42(b), and a maximum Qualified Basis amount. In specifying the maximum Applicable Percentage and the maximum Qualified Basis amount, the Department shall disregard the first-year conventions described in the Code, §42(f)(2)(A) and §42(f)(3)(B). The Housing Credit Allocation made by the Department shall not exceed the amount necessary to support the extended low-income housing commitment as required by the Code, §42(h)(6)(C)(i).

(g) Development inspections shall be required to show that the Development is built or rehabilitated according to construction threshold criteria and Development characteristics identified at application. At a minimum, all Development inspections must meet Uniform Physical Condition Standards (UPCS) as referenced in Treasury Regulation §1.42-5 (d)(2)(ii) and include an inspection for quality during the construction process while defects can reasonably be corrected and a final inspection at the time the Development is placed in service. All such Development inspections shall be performed by the Department or by an independent Third Party inspector acceptable to the Department. The Development Owner shall pay all fees and costs of said inspections as described in §50.20 of this chapter. Details regarding the construction inspection process are set forth in the Department Rule Chapter 60 of this title, the Department's Compliance Monitoring Policies and Procedures (§2306.081; General Appropriation Act, Article VII, Rider 8(b)).

(h) After the entire Development is placed in service, which must occur prior to the deadline specified in the Carryover Allocation Document and as further outlined in §50.15 of this chapter, the Development Owner shall be responsible for furnishing the Department with documentation which satisfies the requirements set forth in the Cost Certification Procedures Manual. For purposes of this title, and consistent with IRS Notice 88-116, the placed in service date for a new

or existing building used as residential rental property is the date on which the building is ready and available for its specifically assigned function and more specifically when the first Unit in the building is certified as being suitable for occupancy in accordance with state and local law and as certified by the appropriate local authority or registered architect as ready for occupancy. The Cost Certification must be submitted for the entire Development; therefore partial Cost Certifications are not allowed. The Department may require copies of invoices and receipts and statements for materials and labor utilized for the New Construction or Rehabilitation and, if applicable, a closing statement for the acquisition of the Development as well as for the closing of all interim and permanent financing for the Development. If the Development Owner does not fulfill all representations and commitments made in the Application, the Department may make reasonable reductions to the tax credit amount allocated via the IRS Form 8609, may withhold issuance of the IRS Form 8609s until these representations and commitments are met, and/or may terminate the allocation, if appropriate corrective action is not taken by the Development Owner.

(i) The Board at its sole discretion may allocate credits to a Development Owner in addition to those awarded at the time of the initial Carryover Allocation in instances where there is bona fide substantiation of cost overruns and the Department has made a determination that the allocation is needed to maintain the Development's financial viability.

(j) The Department may, at any time and without additional administrative process, determine to award credits to Developments previously evaluated and awarded credits if it determines that such previously awarded credits are or may be invalid and the owner was not responsible for such invalidity.

(k) If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Department will impose a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate of that Applicant for any Application in an Application Round occurring concurrent to the return of credits or if no Application Round is pending the Round immediately following the return of credits. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20%.

§50.17. Board Reevaluation, Appeals Process; Provision of Information or Challenges Regarding Applications; Amendments; Housing Tax Credit and Ownership Transfers; Sale of Tax Credit Properties; Withdrawals; Cancellations; Alternative Dispute Resolution.

(a) Board Reevaluation. (§2306.6731(b)). Regardless of development stage, the Board shall reevaluate a Development that undergoes a substantial change between the time of initial Board approval of the Development and the time of issuance of a Commitment Notice or Determination Notice for the Development. For the purposes of this subsection, substantial change shall be those items identified in subsection (d)(4) of this section. The Board may revoke any Commitment Notice or Determination Notice issued for a Development that has been unfavorably reevaluated by the Board.

(b) Appeals Process. (§2306.6715) An Applicant may appeal decisions made by the Department as follows.

(1) The decisions that may be appealed are identified in subparagraphs (A) - (D) of this paragraph.

(A) A determination regarding the Application's satisfaction of:

(i) Eligibility Requirements;

(ii) Disqualification or debarment criteria;

(iii) Pre-Application or Application Threshold Criteria;

(iv) Underwriting Criteria;

(B) The scoring of the Application under the Application Selection Criteria; and

(C) A recommendation as to the amount of Housing Tax Credits to be allocated to the Application.

(D) Any Department decision that results in termination of an Application.

(2) An Applicant may not appeal a decision made regarding an Application filed by another Applicant.

(3) An Applicant must file its appeal in writing with the Department not later than the seventh day after the date the Department publishes the results of any stage of the Application evaluation process identified in §50.9 of this chapter. In the appeal, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application. If the appeal relates to the amount of Housing Tax Credits recommended to be allocated, the Department will provide the Applicant with the underwriting report upon request.

(4) The Executive Director of the Department shall respond in writing to the appeal not later than the 14th day after the date of receipt of the appeal. If the Applicant is not satisfied with the Executive Director's response to the appeal, the Applicant may appeal directly in writing to the Board, provided that an appeal filed with the Board under this subsection must be received by the Board before:

(A) The seventh day preceding the date of the Board meeting at which the relevant commitment decision is expected to be made; or

(B) The third day preceding the date of the Board meeting described by subparagraph (A) of this paragraph, if the Executive Director does not respond to the appeal before the date described by subparagraph (A) of this paragraph.

(5) Board review of an appeal under paragraph (4) of this subsection is based on the original Application and additional documentation filed with the original Application. The Board may not review any information not contained in or filed with the original Application. The decision of the Board regarding the appeal is final.

(6) The Department will post to its web site an appeal filed with the Department or Board and any other document relating to the processing of the appeal. (§2306.6717(a)(5))

(c) Provision of Information or Challenges Regarding Applications from Unrelated Entities to the Application. The Department will address information or challenges received from unrelated entities to a specific 2008 active Application, utilizing a preponderance of the evidence standard, as stated in paragraphs (1) - (3) of this subsection, provided the information or challenge includes a contact name, telephone number, fax number and e-mail address of the person providing the information or challenge and must be received by the Department no later than June 15, 2008:

(1) Within 14 business days of the receipt of the information or challenge, the Department will post all information and challenges received (including any identifying information) to the Department's website.

(2) Within seven business days of the receipt of the information or challenge, the Department will notify the Applicant related to the information or challenge. The Applicant will then have seven

business days to respond to all information and challenges provided to the Department.

(3) Within 14 business days of the receipt of the response from the Applicant, the Department will evaluate all information submitted and other relevant documentation related to the investigation. This information may include information requested by the Department relating to this evaluation. The Department will post its determination summary to its website. Any determinations made by the Department cannot be appealed by any party unrelated to the Applicant.

(d) Amendment of Application Subsequent to Allocation by Board. (§2306.6712 and §2306.6717(a)(4))

(1) If a proposed modification would materially alter a Development approved for an allocation of a Housing Tax Credit, or if the Applicant has altered any selection criteria item for which it received points, the Department shall require the Applicant to file a formal, written request for an amendment to the Application.

(2) The Executive Director of the Department shall require the Department staff assigned to underwrite Applications to evaluate the amendment and provide an analysis and written recommendation to the Board. The appropriate party monitoring compliance during construction in accordance with §50.18 of this chapter shall also provide to the Board an analysis and written recommendation regarding the amendment. For amendments which require Board approval, the amendment request must be received by the Department at least 30 days prior to the Board meeting where the amendment will be considered.

(3) The Board must vote on whether to approve an amendment. The Board by vote may reject an amendment and, if appropriate, rescind a Commitment Notice or terminate the allocation of Housing Tax Credits and reallocate the credits to other Applicants on the Waiting List if the Board determines that the modification proposed in the amendment:

(A) would materially alter the Development in a negative manner; or

(B) would have adversely affected the selection of the Application in the Application Round.

(4) Material alteration of a Development includes, but is not limited to:

(A) a significant modification of the site plan;

(B) a modification of the number of units or bedroom mix of units;

(C) a substantive modification of the scope of tenant services;

(D) a reduction of 3% 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 the Development of at least 5%;

(G) an increase or decrease in the site acreage of greater than 10% from the original site under control and proposed in the Application; and

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

(5) In evaluating the amendment under this subsection, the Department staff shall consider whether the need for the modification proposed in the amendment was:

(A) Reasonably foreseeable by the Applicant at the time the Application was submitted; or

(B) Preventable by the Applicant.

(6) This section shall be administered in a manner that is consistent with the Code, §42.

(7) Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and monitor regarding the amendment will be posted to the Department's web site.

(8) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants targeted in the Real Estate Analysis Report at the time of the Commitment Notice issuance, as approved by the Board, the following procedure will apply. For amendments that involve a reduction in the total number of low-income Units being served, or a reduction in the number of low-income Units at any level of AMGI, as approved by the Board, evidence must be presented to the Department that includes written confirmation from the lender and syndicator 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 the Real Estate Analysis Division that the Unit adjustment (or an alternative Unit adjustment) is necessary for the continued feasibility of the Development. Additionally, if it is determined by the Department that the allocation of credits would not have been made in the year of allocation because the loss of low-income targeting points would have resulted in the Application not receiving an 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 24 months from the time that the amendment is approved.

(e) Housing Tax Credit and Ownership Transfers. (§2306.6713) A Development Owner may not transfer an allocation of Housing Tax Credits or ownership of a Development supported with an allocation of Housing Tax Credits to any Person other than an Affiliate of the Development Owner unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer.

(1) Transfers will not be approved prior to the issuance of IRS Forms 8609 unless the Development Owner can provide evidence that a hardship is creating the need for the transfer (potential bankruptcy, removal by a partner, etc.). A Development Owner seeking Executive Director approval of a transfer and the proposed transferee must provide to the Department a copy of any applicable agreement between the parties to the transfer, including any third-party agreement with the Department.

(2) A Development Owner seeking Executive Director approval of a transfer must provide the Department with documentation requested by the Department, including but not limited to, a list of the names of transferees and Related Parties; and detailed information describing the experience and financial capacity of transferees and related parties. All transfer requests must disclose the reason for the request. The Development Owner shall certify to the Executive Director that

the tenants in the Development have been notified in writing of the transfer before the 30th day preceding the date of submission of the transfer request to the Department. Not later than the fifth working day after the date the Department receives all necessary information under this section, the Department shall conduct a qualifications review of a transferee to determine the transferee's past compliance with all aspects of the Housing Tax Credit Program, LURAs; and the sufficiency of the transferee's experience with Developments supported with Housing Credit Allocations. If the viable operation of the Development is deemed to be in jeopardy by the Department, the Department may authorize changes that were not contemplated in the Application.

(3) As it relates to the Credit Cap further described in §50.6(d) of this chapter, the credit cap will not be applied in the following circumstances:

(A) 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

(B) In cases where the General Partner is being replaced if the award of credits was made at least five years prior to the transfer request date.

(f) Sale of Certain Tax Credit Properties. Consistent with §2306.6726, Texas Government Code, not later than two years before the expiration of the Compliance Period, a Development Owner who agreed to provide a right of first refusal under §2306.6725(b)(1), Texas Government Code and who intends to sell the property shall notify the Department of its intent to sell.

(1) The Development Owner shall notify Qualified Nonprofit Organizations and tenant organizations of the opportunity to purchase the Development. The Development Owner may:

(A) During the first six-month period after notifying the Department, negotiate or enter into a purchase agreement only with a Qualified Nonprofit Organization that is also a community housing development organization as defined by the Federal Home Investment Partnership Program (HOME);

(B) During the second six-month period after notifying the Department, negotiate or enter into a purchase agreement with any Qualified Nonprofit Organization or tenant organization; and

(C) During the year before the expiration of the compliance period, negotiate or enter into a purchase agreement with the Department or any Qualified Nonprofit Organization or tenant organization approved by the Department.

(2) Notwithstanding items for which points were received consistent with §50.9(i) of this chapter, a Development Owner may sell the Development to any purchaser after the expiration of the compliance period if a Qualified Nonprofit Organization or tenant organization does not offer to purchase the Development at the minimum price provided by §42(i)(7), Internal Revenue Code of 1986 (26 U.S.C. §42(i)(7)), and the Department declines to purchase the Development.

(g) Withdrawals. An Applicant may withdraw an Application prior to receiving a Commitment Notice, Determination Notice, Carryover Allocation Document or Housing Credit Allocation, or may cancel a Commitment Notice or Determination Notice by submitting to the Department a notice, as applicable, of withdrawal or cancellation, and making any required statements as to the return of any tax credits allocated to the Development at issue.

(h) Cancellations. The Department may cancel a Commitment Notice, Determination Notice or Carryover Allocation prior to the issuance of IRS Form 8609 with respect to a Development if:

(1) The Applicant or the Development Owner, or the Development, as applicable, fails to meet any of the conditions of such Commitment Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Applications process for the Development;

(2) Any 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 Development's Application ineligible for funding pursuant to §50.5 of this chapter if such event had occurred prior to issuance of the Commitment Notice or Carryover Allocation; or

(4) The Applicant or the Development Owner or the Development, as applicable, fails to comply with these Rules or the procedures or requirements of the Department.

(i) Alternative Dispute Resolution Policy. In accordance with §2306.082, Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title.

§50.18. Compliance Monitoring and Material Noncompliance.

The Code, §42(m)(1)(B)(iii), requires the Department as the housing credit agency to include in its QAP a procedure that the Department will follow in monitoring Developments for compliance with the provisions of the Code, §42 and in notifying the IRS of any noncompliance of which the Department becomes aware. Detailed compliance rules and procedures for monitoring are set forth in Chapter 60 of this title.

§50.19. Department Records; Application Log; IRS Filings.

(a) Department Records. At all times during each calendar year the Department shall maintain a record of the following:

(1) The cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Commitment Notices during such calendar year;

(2) The cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Carryover Allocation Documents during such calendar year;

(3) The cumulative amount of Housing Credit Allocations made during such calendar year; and

(4) The remaining unused portion of the State Housing Credit Ceiling for such calendar year.

(b) Application Log. (§2306.6702(a)(3) and §2306.6709) The Department shall maintain for each Application an Application Log that tracks the Application from the date of its submission. The Application Log will contain, at a minimum, the information identified in paragraphs (1) - (9) of this subsection.

(1) The names of the Applicant and all General Partners of the Development Owner, the owner contact name and phone number, and full contact information for all members of the Development Team;

(2) The name, physical location, and address of the Development, including the relevant Uniform State Service Region of the state;

(3) The number of Units and the amount of Housing Tax Credits requested for allocation by the Department to the Applicant;

(4) Any Set-Aside category under which the Application is filed;

(5) The requested and awarded score of the Application in each scoring category adopted by the Department under the Qualified Allocation Plan;

(6) Any decision made by the Department or Board regarding the Application, including the Department's decision regarding whether to underwrite the Application and the Board's decision regarding whether to allocate Housing Tax Credits to the Development;

(7) The names of individuals making the decisions described by paragraph (6) of this subsection, including the names of Department staff scoring and underwriting the Application, to be recorded next to the description of the applicable decision;

(8) The amount of Housing Tax Credits allocated to the Development; and

(9) A dated record and summary of any contact between the Department staff, the Board, and the Applicant or any Related Parties.

(c) IRS Filings. The Department shall mail to the Internal Revenue Service, not later than the 28th day of the second calendar month after the close of each calendar year during which the Department makes Housing Credit Allocations, a copy of each completed (as to Part I) IRS Form 8609, the original of which was mailed or delivered by the Department to a Development Owner during such calendar year, along with a single completed IRS Form 8610, Annual Low-income Housing Credit Agencies Report. When a Carryover Allocation is made by the Department, a copy of the Carryover Allocation Agreement will be mailed or faxed to the Development Owner by the Department. The original of the Carryover Allocation Document will be retained by the Department and IRS Form 8610 Schedule A will be filed by the Department with IRS Form 8610 for the year in which the allocation is made. The Department shall be authorized to vary from the requirements of this section to the extent required to adapt to changes in IRS requirements.

§50.20. Program Fees; Refunds; Public Information Requests; Adjustments of Fees and Notification of Fees; Extensions; Penalties.

(a) Timely Payment of Fees. All fees must be paid as stated in this section, unless the Executive Director has granted a waiver for specific extenuating and extraordinary circumstances. To be eligible for a waiver, the Applicant must submit a request for a waiver no later than 10 business days prior to the deadlines as stated in this section. Any fees, as further described in this section, that are not timely paid will cause an Applicant to be ineligible to apply for tax credits and additional tax credits and ineligible to submit extension requests, ownership changes and Application amendments. Payments made by check, for which insufficient funds are available, may cause the Application, commitment or allocation to be terminated.

(b) Pre-Application Fee. Each Applicant that submits a Pre-Application shall submit to the Department, along with such Pre-Application, a non refundable Pre-Application fee, in the amount of $10 per Unit. Units for the calculation of the Pre-Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Pre-Applications without the specified Pre-Application Fee in the form of a check will not be accepted. Pre-Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the managing General Partner of the Development Owner, or Control the managing General Partner of the Development Owner, will receive a discount of 10% off the calculated Pre-Application fee. (General Appropriation Act, Article VII, Rider 7; §2306.6716(d)). For Tax Exempt Bond Developments with the Department as the issuer, the Applicant shall submit the following fees: $1,000 (payable to TDHCA), $1,500 (payable to Vinson & Elkins, Bond Counsel), and $5,000 (payable to the Texas Bond Review Board).

(c) Application Fee. Each Applicant that submits an Application shall submit to the Department, along with such Application, an Application fee. For Applicants having submitted a Pre-Application which met Pre-Application Threshold and for which a Pre-Application fee was paid, the Application fee will be $20 per Unit. For Applicants not having submitted a Pre-Application, the Application fee will be $30 per Unit. Units for the calculation of the Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Applications without the specified Application Fee in the form of a check will not be accepted. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as he managing General Partner of the Development Owner, or Control the managing General Partner of the Development Owner, will receive a discount of 10% off the calculated Application fee. (General Appropriation Act, Article VII, Rider 7; §2306.6716(d)). For Tax Exempt Bond Developments with the Department as the Issuer the Applicant shall submit a tax credit application fee of $30 per unit and bond application fee of $10,000. Those Applications utilizing a local issuer only need to submit the tax credit application fee.

(d) Refunds of Pre-Application or Application Fees. (§2306.6716(c)). Upon written request from the Applicant, the Department shall refund the balance of any fees collected for a Pre-Application or Application that is withdrawn by the Applicant or that is not fully processed by the Department. The amount of refund on Pre-Applications not fully processed by the Department will be commensurate with the level of review completed. Intake and data entry will constitute 50% of the review, and Threshold review prior to a deficiency issued will constitute 30% of the review. Deficiencies submitted and reviewed constitute 20% of the review. The amount of refund on Applications not fully processed by the Department will be commensurate with the level of review completed. Intake and data entry will constitute 20% of the review, the site visit will constitute 20% of the review, Eligibility and Selection review will constitute 20%, and Threshold review will constitute 20% of the review, and underwriting review will constitute 20%. The Department must provide the refund to the Applicant not later than the 30th day after the date of request.

(e) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation of a Development by an independent external underwriter in accordance with §50.9(d)(6), (e)(3), and (f)(6) of this chapter if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the commitment fee established in subsection (f) of this section, in the event that a Commitment Notice or Determination Notice is issued by the Department to the Development Owner.

(f) Commitment or Determination Notice Fee. Each Development Owner that receives a Commitment Notice or Determination Notice shall submit to the Department, not later than the expiration date on the Commitment or Determination notice, a non-refundable commitment fee equal to 5% of the annual Housing Credit Allocation amount.

The commitment fee shall be paid by check. If a Development Owner of an Application awarded Competitive Housing Tax Credits has paid a Commitment Fee and returns the credits by November 1, 2008, the Development Owner will receive a refund of 50% of the Commitment Fee.

(g) Compliance Monitoring Fee. Upon receipt of the cost certification, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal $40 per tax credit unit. The fee will be collected, retroactively if applicable, beginning with the first year of the credit period. The invoice must be paid prior to the issuance of form 8609. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service.

(h) Building Inspection Fee. The Building Inspection Fee must be paid at the time the Commitment Fee is paid. The Building Inspection Fee for all Developments is $750. Inspection fees in excess of $750 may be charged to the Development Owner not to exceed an additional $250 per Development.

(i) Tax-Exempt Bond Credit Increase Request Fee. As further described in §50.12 of this chapter, requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to 5% of the amount of the credit increase for one year.

(j) Public Information Requests. Public information requests are processed by the Department in accordance with the provisions of the Government Code, Chapter 552. The Department uses the guidelines promulgated by The Texas Facilities Commission to determine the cost of copying, and other costs of production.

(k) Periodic Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b)). All fees charged by the Department in the administration of the tax credit program will be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. The Department shall publish each year an updated schedule of Application fees that specifies the amount to be charged at each stage of the Application process. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

(l) Extension and Amendment Requests. All extension requests relating to the Commitment Notice, Carryover, Documentation for 10% Test, Substantial Construction Commencement, Placed in Service or Cost Certification requirements and amendment requests shall be submitted to the Department in writing and be accompanied by a mandatory non-refundable extension fee in the form of a check in the amount of $2,500. Such requests must be submitted to the Department no later than the date for which an extension is being requested. All requests for extensions totaling less than 6 months may be approved by the Executive Director and are not required to have Board approval. For extensions that require Board approval, the extension request must be received by the Department at least 15 business days prior to the Board meeting where the extension will be considered. The extension request shall specify a requested extension date and the reason why such an extension is required. Carryover extension requests shall not request an extended deadline later than December 1st of the year the Commitment Notice was issued. The Department, in its sole discretion, may consider and grant such extension requests for all items. If an extension is required at Cost Certification, the fee of $2,500 must be received by the Department to qualify for issuance of Forms 8609. Amendment requests must be submitted consistent with §50.17(d) of this chapter. The Board may waive related fees for good cause.

(m) Penalties. Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of 8609's. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10% of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of form 8609's if the tax credits are not returned, and 8609's issued, within 180 days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with §42, Internal Revenue Code.

§50.21. Manner and Place of Filing All Required Documentation.

(a) All Applications, letters, documents, or other papers filed with the Department must be received only between the hours of 8:00 a.m. and 5:00 p.m. on any day which is not a Saturday, Sunday or a holiday established by law for state employees.

(b) All notices, information, correspondence and other communications under this title shall be deemed to be duly given if delivered or sent and effective in accordance with this subsection. Such correspondence must reference that the subject matter is pursuant to the Tax Credit Program and must be addressed to the Housing Tax Credit Program, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, TX 78711-3941 or for hand delivery or courier to 221 East 11th Street, Austin, Texas 78701 or more current address of the Department as released on the Department's website. Every such correspondence required or contemplated by this title to be given, delivered or sent by any party may be delivered in person or may be sent by courier, telecopy, express mail, telex, telegraph or postage prepaid certified or registered air mail (or its equivalent under the laws of the country where mailed), addressed to the party for whom it is intended, at the address specified in this subsection. Regardless of method of delivery, documents must be received by the Department no later than 5:00 p.m. for the given deadline date. Notice by courier, express mail, certified mail, or registered mail will be considered received on the date it is officially recorded as delivered by return receipt or equivalent. Notice by telex or telegraph will be deemed given at the time it is recorded by the carrier in the ordinary course of business as having been delivered, but in any event not later than one business day after dispatch. Notice not given in writing will be effective only if acknowledged in writing by a duly authorized officer of the Department.

(c) If required by the Department, Development Owners must comply with all requirements to use the Department's web site to provide necessary data to the Department.

§50.22. Waiver and Amendment of Rules.

(a) The Board, in its discretion, may waive any one or more of these Rules if the Board finds that waiver is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code, or for other good cause, as determined by the Board.

(b) Section 1.13 of this title may be waived for any person seeking any action by filing a request with the Board.

(c) The Department may amend this chapter and the Rules contained herein at any time in accordance with the Government Code, Chapter 2001.

§50.23. Deadlines for Allocation of Housing Tax Credits. (§2306.6724)

(a) Not later than September 30 of each year, the Department shall prepare and submit to the Board for adoption the draft QAP required by federal law for use by the Department in setting criteria and priorities for the allocation of tax credits under the Housing Tax Credit program.

(b) The Board shall adopt and submit to the Governor the QAP not later than November 15 of each year.

(c) The Governor shall approve, reject, or modify and approve the QAP not later than December 1 of each year. (§2306.67022) (§42(m)(1))

(d) The Board shall annually adopt a manual, corresponding to the QAP, to provide information on how to apply for Housing Tax Credits.

(e) Applications for Housing Tax Credits to be issued a Commitment Notice during the Application Round in a calendar year must be submitted to the Department not later than March 1.

(f) The Board shall review the recommendations of Department staff regarding Applications and shall issue a list of approved Applications each year in accordance with the Qualified Allocation Plan not later than June 30.

(g) The Board shall approve final commitments for allocations of Housing Tax Credits each year in accordance with the Qualified Allocation Plan not later than July 31, unless unforeseen circumstances prohibit action by that date. In any event, the Board shall approve final commitments for allocations of Housing Tax Credits each year in accordance with the Qualified Allocation Plan not later than September 30. Department staff will subsequently issue Commitment Notices based on the Board's approval. Final commitments may be conditioned on various factors approved by the Board, including resolution of contested matters in litigation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2008.

TRD-200800147
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: September 7, 2007
For further information, please call: (512) 475-3916

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CHAPTER 60. COMPLIANCE ADMINISTRATION

SUBCHAPTER B. ACCESSIBILITY REQUIREMENTS

10 TAC §§60.201 - 60.211

The Texas Department of Housing and Community Affairs (the Department) adopts new Chapter 60, Subchapter B, §§60.201 - 60.211, concerning Accessibility Requirements. Sections 60.201 - 60.207, 60.209 and 60.210 are adopted with changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 6954). Section 60.208 and §60.211 are adopted without changes and will not be republished.

The new subchapter is adopted to ensure that the accessibility policy conforms to other Department rules that are being revised in the 2008 rule cycle and to implement changes enacted during the Regular Session of the 80th Texas Legislature.

Public hearings on the new chapter were held in El Paso (September 24, 2007), Lubbock (September 28, 2007), Brownsville (October 3, 2007), Houston (September 26, 2007), Dallas (October 1, 2007), and Austin (October 4, 2007). Additionally, written comments on the new chapter were accepted by mail, e-mail, and facsimile through October 29, 2007.

SUMMARY OF COMMENTS, STAFF RESPONSE AND BOARD ACTION

The Department received one comment from Advocacy, Inc., and a letter agreeing with Advocacy, Inc. from United Cerebral Palsy (UCP). Advocacy, Inc. comments were based on an earlier version of the rule rather than the published version. The Department conformed these comments and requested that Advocacy, Inc. review our alterations to ensure that they matched the published rule and were accurate to their original comment. This was confirmed and the following comments reflect consistency with the published rule. Our outside legal counsel reviewed the comments and provided a reasoned response based on the comments presented. They are:

COMMENT: The language in §60.201(b) tracks the general anti-discrimination mandate in §504, but the TDHCA regulations do not include anything similar tracking the general FHA anti-discrimination requirements, or even anything tracking the specific FHA provisions regarding accessibility. The difference is important because, for example, the "solely by reason of" language in the TDHCA regulations accurately tracks the §504 language, but it is not the correct causation standard applicable to FHA claims, which is much less restrictive than sole cause. (footnotes deleted)

STAFF RESPONSE: Agreed. Change made in text where appropriate. This was a persistent problem with a regulation that was developed to focus on §504 but also had to be consistent with the Fair Housing Act.

COMMENT: It would seem to improve the clarity of §60.201(c) to add a comma before the word 'and/or', and to add the word 'to' after the word 'and/or'.

STAFF RESPONSE: Agreed. Change made in text where appropriate.

COMMENT: It would also seem to improve the clarity of §60.201(d) if the text were broken into subpoints, such as:

(a) Except as set forth in subpart (b) below, this subchapter does not apply to entities that only participate in the Housing Choice Voucher or the Enhanced Voucher programs and receive no other federal financial assistance.

(b) All entities that participate in the Housing Choice Voucher or the Enhanced Voucher programs are covered by the Fair Housing Act's prohibitions against discrimination, including the requirements that such entities:

(1) permit reasonable modifications to existing premises;

(2) make reasonable accommodations to rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; and

(3) for those properties that were designed and constructed for first occupancy after March 13, 1991, comply with the Fair Hous-

ing Act's provisions for accessible design and construction of new multifamily housing.

STAFF RESPONSE: No substantive change recommended. Proposed changes incorporated in slightly different format.

COMMENT: Assuming that there may be entities that contract with the state for the purpose of providing housing services (or property management services and the like), in order to prevent them from arguing that they are exempted from these regulations, §60.201(e) should be edited to add the words 'non-housing' before the word 'services'.

STAFF RESPONSE: Staff recommends no change and believes the rule is clear.

COMMENT: There may need to be a definition of "entity" in §60.202 in order to prevent someone from thinking that §60.201(d) applies to tenants or ultimate purchasers.

STAFF RESPONSE: Staff believes the proposed change would create more problems than it would resolve. The current regulation is clear in that it applies to recipients and subrecipients.

COMMENT: Numbering (as subparts) those terms being defined in §60.202 would improve the usefulness of the regulation because the definitions could then be cited much more easily.

STAFF RESPONSE: Agreed. Change made in text where appropriate.

COMMENT: There is a problem with the second sentence of the definition of "Disability" in Proposed §60.202. That wording accurately describes the limitation of the definition of the term under the Fair Housing Act, but that language is not found in the definition set out in HUD's §504 regulations, and is in fact inconsistent with it. (footnote eliminated)

STAFF RESPONSE: Staff does not accept this comment as this provision is contained in the Fair Housing Act, and, as noted in the commenters footnote 6, it is broader than the language found in HUD's §504 regulations. However, this provision of the Fair Housing Act applies to the housing covered by this regulation. It provides broader protection for housing providers in dealing with applicants or residents whose tenancy presents a threat to the health or safety, or risk of damage to the property, of others.

"Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others." 42 USC §3604(f)(9).

COMMENT: We are unaware of clear authority for the final sentence in the definition of "Federal financial assistance" in §60.202, that receipt of federal tax credits is not federal financial assistance. That language does not appear in the §504 regulation that is cited as the source of this definition; thus, leaving it out would conform the regulation more closely to federal law.

STAFF RESPONSE: This section is eliminated based on state law. Texas Government Code §2306.6730 specifically requires low income tax credit developments to meet §504 requirements.

COMMENT: With regard to the definition of 'Multifamily housing project' in §60.202 we are not aware of what contribution the cited case makes. The definition could also be improved by deleting in the first sentence the words 'under a single project number' (because that language is already in the second sentence), and by adding the words 'Federal financial' before the word 'assistance' in the second sentence (because that tracks the referenced federal regulation more closely, and because without these words the reference to 'assistance' could be confusing).

STAFF RESPONSE: The cited case provides the authority for the proposition that a "project" includes all units, wherever located, if they are covered by a single contract. This was not clear from HUD's regulations until the ruling in this case, which HUD has followed as a policy matter. As to the specific suggestions, they are accepted and the changes have been made in the text.

COMMENT: Section 60.203(c) is incomplete in that it does not point out that HUD may require a higher percentage of accessible units. We therefore recommend that the following be included after the first paragraph in this section:

If HUD prescribes a higher percentage or number of accessible units pursuant to its authority under 24 CFR §8.22(c) or §8.23(b)(2), the recipient must comply with such higher percentage or number.

STAFF RESPONSE: No change made. If federal rules change, the state rule will be changed to reflect that change if required.

COMMENT: Section 60.203(c) excludes home ownership programs from the 5% - 2% rule. Although that position is supported by the district court holding cited in the source, we see no support for that exclusion in either §504, its implementing regulations, or the HUD Handbook provision also cited there. We thus recommend that this exclusion be omitted until further guidance is received.

STAFF RESPONSE: HUD has not issued any clarifying interpretation on this issue and the draft rule was published with this language included. The change suggested by the commenter would be too significant a policy change to adopt in final rules. The suggestion could be considered in future rules or when guidance is provided by HUD.

COMMENT: In the Example 203(1) in §60.203, in order to use modern, "people first" language, we recommend deleting the words 'is disabled' and replacing them with the words 'has a disability.'

STAFF RESPONSE: Agreed. Change made in text where appropriate.

COMMENT: We suggest adding the following sentence to the end of the first paragraph under §60.204(a)(1): "In choosing among available methods for meeting the requirements of this section, the recipient shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate." This more closely track the relevant §504 regulation, and more clearly links the provision to the §504 integration mandate. (footnote eliminated)

STAFF RESPONSE: Agreed. The authority for this provision is 24 CFR §8.4(d), "Recipients shall administer programs and activities receiving Federal financial assistance in the most integrated setting appropriate to the needs of qualified individuals with handicaps." Appropriate changes have been made in the text.

COMMENT: We also suggest providing a separate source citation for this first paragraph under §60.204(a)(1), namely:

Source: 24 C.F.R. §8.21(c)(2)(I); HUD Handbook 4350.3, §2-35(E)(3).

STAFF RESPONSE: Staff does not recommend change. The appropriate authority is 24 CFR §8.4(d). The regulatory authority at 24 CFR §8.21 addresses non-housing programs. The citation to 24 CFR §8.4(d) is, however, incorporated in the text.

COMMENT: As written, Example 204(1) following §60.204(a)(1) is not really relevant to the paragraph above it. It better exemplifies the part of the fundamental alteration analysis that provides that if accessibility would result in an undue financial and administrative burden, the recipient must still take other reasonable steps to accessibility. We suggest that this provision be made express, and therefore also suggest that this Example be moved to that location. We also suggest that this Example be re-worded to more closely conform to its apparent source, namely the 2d Example in HUD Handbook 4350.3, §2-43(D). The reason is that as currently written in the Proposed Rule, this Example is confusing because it might incorrectly suggest that other functions that occur in the office (e.g., arranging to see available units, making complaints, attending tenant meetings, etc.) do not have to be made accessible.

STAFF RESPONSE: Although a rental office may also be covered by the Americans with Disabilities Act, Title III, see also *Sapp v. MHI Partnership, Inc,* 199 F. Supp. 2d 578 (S. D. TX 2002), the example that was selected does not invoke ADA title III coverage because it is an older building, where removal of barriers was not feasible, and where no renovations were involved. A new example has been provided which does not raise the undue financial and administrative hardship issue in the same way.

EXAMPLE: A resident who uses a wheelchair wishes to participate in the Family Self-Sufficiency program at the local housing authority. However, the sessions are held in an older building with three steps up to the front door, and inaccessible public restrooms. The resident requests that a ramp be constructed and that the public men's bathroom have an accessible stall added. Instead, the housing authority moves the site for the Family Self Sufficiency program to an accessible location.

COMMENT: Although the language in the first paragraph under §60.204(a)(2) is accurate, it is incomplete in describing the undue burden analysis, and we believe it is thus misleading. In addition, we believe the paragraph could be improved by adding a source citation to it. Also, we believe that the undue burden analysis warrants its own heading. Finally, we believe that the subparagraphs following the first paragraph need some context, are not completely accurate, and should have a citation to authority.

STAFF RESPONSE: The submission by the commenter includes the identical language contained in the proposed regulation, plus additional language. There is no objection to the inclusion of citations as suggested. There is also no objection to the inclusion of the more specific proposed language in the undue burden section or the provision regarding taking other steps to provide accessibility, which fairly state HUD's position on this issue. Changes made in the text where appropriate.

COMMENT: In Example 204(2) following §60.204(a)(2), we recommend that in the third line, the words 'the units' be replaced with the words 'any unit'. This will improve its accuracy and consistency. We also recommend that the last sentence reflect some outcome. This will make it more useful, and more consistent with its apparent source, HUD Handbook 4350.3, Exhibit 2-6, paragraph 3. STAFF RESPONSE: Agreed. Changes made in the text where appropriate.

COMMENT: In Example 204(3) following §60.204(a)(2), we recommend that in the fourth line, the word 'undue' be replaced before the word 'financial'. This will improve its accuracy and consistency. We also recommend that the example include the fact that funding was not otherwise available, and that it also point out that the tenant must be allowed to make accessibility modifications at his or her own expense. This will make the example more accurate and complete, and also more consistent with HUD Handbook 4350.3.

STAFF RESPONSE: Agreed to the first and third changes recommended. Changes made in the text where appropriate. As to the second change, this seems unnecessary, given the opening reference to the first example. In addition, the language in the second example has also been revised by changing the word "may" to "should" in the sixth line to clarify that an owner who identifies an undue burden as defined in the proposed regulation must still examine other alternative approaches to accessibility. This is consistent with judicial precedent interpreting §504 and the Fair Housing Act.

COMMENT: In Example 204(4) following §60.204(a)(2), we recommend that the fourth sentence (referencing the 5% requirement) be deleted and replaced with:

The property is not required to make a unit fully compliant with UFAS. But the property must still take all other steps necessary to comply with UFAS that will not result in an undue financial hardship.

This will make the example more accurate and complete, and also more consistent with HUD Handbook 4350.3.

STAFF RESPONSE: No changes recommended. The example as written is MORE explicit than the suggested language.

COMMENT: In Example 204(6) following §60.204(a)(2), to improve its accuracy, we recommend that the final sentence be changed to read:

No additional rehabilitation for accessibility need be conducted unless HUD requires a higher percentage of accessible units pursuant to its authority under 24 C.F.R. §8.22(c) or §8.23(b)(2).

STAFF RESPONSE: No change made. If federal rules change, the state rule will be changed to reflect that change if required.

COMMENT: The citation in §60.204(b) appears to be in error; it should read:

Source: HUD Handbook 4350.3, §2-37(E).

STAFF RESPONSE: The commenter is correct. Change made in the text.

COMMENT: The citation in §60.204(c) appears to be in error; it should read:

Source: HUD Handbook 4350.3, §2-37(D).

STAFF RESPONSE: The commenter is correct. Change made in the text.

COMMENT: The citation in §60.204(d) is correct, but it could also include a reference to HUD Handbook 4350.3, §2-37(B).

STAFF RESPONSE: Agreed. Change made in Text.

COMMENT: We disagree with the Example following §60.204(d), in that it would appear to suggest that no other elements need be made accessible if a certain element cannot be made to conform to UFAS, and it also contradicts HUD Handbook 4350.3, §2-37(c).

STAFF RESPONSE: A final sentence, consistent with HUD Handbook 4350.3, §2-37(C) has been added for more clarity to the example.

COMMENT: We believe that §60.205 can be simplified, and made to track federal law more closely, by editing it to read:

If alterations are undertaken to a project that has 15 or more units, and the cost of the alterations is 75 percent or more of the replacement cost of the completed facility, the recipient must make a minimum of 5% of the units in the property accessible for persons with mobility impairments by full compliance with UFAS, and must make a minimum of 2% of the units accessible for persons with visual and hearing impairments.

STAFF RESPONSE: No change recommended. The draft language paraphrases the language in the referenced Handbook section. The introductory language makes it clear that properties built before 1988 are subject to these provisions. Properties built after 1988 have an absolute requirement to meet the 5% and 2% minimums. See §60.203(3). The suggested language could be misread to suggest that only properties making alterations must comply, and that is not accurate for properties built after 1988, which are subject to an absolute requirement to comply.

COMMENT: With regard to the numbered paragraphs in §60.206, we believe that separate citations to source material after each might improve this section. Those source citations might include:

For paragraph 1, 24 C.F.R. §8.23(b)(1); HUD Handbook 4350.3, §2-35(E)(2)(a)

For paragraph 2, 24 C.F.R. §8.23(b)(1); HUD Handbook 4350.3, §2-35(E)(2)(b)

For paragraph 3, 24 C.F.R. §8.23(b)(1); HUD Handbook 4350.3, §2-35(E)(2)(c)

For paragraph 4, HUD Handbook 4350.3, §2-35(E)(2)(c)(1)

For paragraph 5, HUD Handbook 4350.3, §2-35(E)(2)(c)(2)

For paragraph 6, 24 C.F.R. §8.3

STAFF RESPONSE: The existing citation is retained for this section of the proposed rule; one citation to HUD Handbook 4350.3 §2-35(E) has been added.

COMMENT: With regard to subparagraph 5 in §60.206, omitting the words 'but not required' would more closely conform the wording to its source, HUD Handbook 4350.3, §2-35(E)(2)(c)(2).

STAFF RESPONSE: Staff believes the language as proposed is accurate.

COMMENT: In the fifth Example in §60.206, we believe the example might be improved by adding at the end: "Reroofing is generally not considered an alteration." This would make the example conform more closely to 24 C.F.R. §8.3.

STAFF RESPONSE: Agreed. Text has been changed to reflect this recommendation.

COMMENT: The sixth (and last) Example in §60.206 contains an error. The words 'replacing the units' should be deleted and replaced with 'replacing the completed property'.

See HUD Handbook 4350.3, §2-35(E)(1).

STAFF RESPONSE: Agreed. Text has been changed to reflect this recommendation.

COMMENT: Section 60.207, paragraph (a)(1) contains errors. It appears to allow the project to choose to make just one unit accessible, even if that is less than 5%. It also omits the 2% requirement. Finally, it applies the 5% rule only to the newly constructed units in a larger project, even if the rules regarding Alterations would require that 5% of the entire project be accessible. To address these issues, this entire Rule might be amended to read:

1) A project consisting of all newly constructed multifamily housing of five or more units shall comply with the accessibility requirements in §60.203(c) above.

2) A project consisting of some existing multifamily housing units, together with some newly constructed multifamily housing of five or more units (e.g., due to demolition, addition of units, or replacement of uninhabitable units) shall be designed and constructed to provide accessibility to persons with disabilities, as follows:

a) A minimum of 5% of the new units (but not less than one unit) shall be made accessible for persons with mobility impairments, and an additional two percent of the units (but not less than one unit) shall be made accessible for persons with hearing or vision impairments.

b) In addition to the above, because such construction is also governed by §60.205 and §206 above, more than 5% of the new units may need to be made accessible for persons with mobility impairments, and more than 2% of the units may need to be made accessible for persons with hearing or vision impairments, if necessary to insure that the property as a whole has 5% of its units that are accessible for persons with mobility impairments, and 2% of its units that are accessible for persons with hearing or vision impairments.

3) All accessible units must be on an accessible route, and must comply with the UFAS requirements.

STAFF RESPONSE: This comment required significant research and thought to reach an appropriate conclusion, including informal consultation with a Washington, D.C. HUD official. Neither the draft language nor the proposed language satisfactorily addresses this question. In response to the comments, proposed §60.207 has been divided into two parts, one part to address situations where as a result of demolition or replacement of uninhabitable units, new free-standing units are constructed. In that situation, new construction requirements will apply, assuming that the project has more than five units. Free standing new construction must have at least 5% of its units accessible to people with mobility impairments and an additional 2% of units accessible to people with sensory impairments. Proposed §60.203(c) has been changed to make it clear that new construction requirements apply when units are replaced because they have been demolished or are uninhabitable.

A different rule applies to newly constructed units that are additions to existing units and structurally attached to them. For units which are additions to an existing project, the 5% and the 2% requirements must be met for the entire project after the addition is completed. So if a property does not meet the 5%/2% requirements at the time units are added through an addition, the units in the addition must contain enough UFAS-compliant units to meet the 5% and 2% requirements considering all of the units that will be in the project when the addition is completed. At the same time, if the property already meets the 5% and the 2% requirements in existing units, in some circumstances no units in the addition will be required to be accessible. For example, to

illustrate the first point, a property has 100 units and none comply with UFAS. Twenty units are being added as a new wing. In this case 6 of the 20 units in the addition must be accessible to people with mobility impairments through compliance with UFAS because there will 120 units in the project after the addition is completed and 5% of 120 is 6. For the same property, 2% of the 120 units, or 3, of the units must comply with UFAS requirements for people with sensory impairments.

Because units that are part of an addition that are structurally attached to existing housing are considered part of the original project, this requirement applies to additions of one or more units.

COMMENT: In §60.207, the organization of subpart (b) seems problematic, and may include language that is inappropriate for regulatory use. We suggest reorganizing and rewording this material as follows:

2) All covered multifamily housing that is newly constructed for first occupancy, including additions of four or more units, must be accessible as defined below, regardless of funding. Such covered units must also be on an accessible route.

(a) In a building with four or more units that has an elevator, all multifamily housing units are covered.

(b) In a building with four or more units without an elevator, all of the ground floor units are covered.

(c) As used in this Rule, "accessible" means designed and constructed to comply with 24 C.F.R. §100.205(c), and with an objective accessibility standard that provides at least as much accessibility as the Fair Housing Act Accessibility Guidelines.

(d) Compliance with a set of standards identified by the U.S. Department of Housing and Urban Development as meeting or exceeding the Fair Housing Act Accessibility Guidelines will provide compliance with this Rule's accessibility requirements. Compliance with local building code requirements does not assure compliance with this Rule, although compliance with the ANSI A117.1-1986 will satisfy the requirements of this Rule.

The Department may also wish to include 24 C.F.R. §100.201 in its source citation.

STAFF RESPONSE: Staff believes the suggested language is less clear than the language in the draft rule. Small language changes have been made consistent with the plain English explanation of these requirements found on the HUD-approved Fair Housing FIRST website.

COMMENT: To insure that the language in §60.209 is clear that using and enjoying a dwelling means something beyond merely living in the dwelling, and to more closely conform this Rule to the source material in HUD Handbook 4350.3, §2-39(A)(3) and (B), the subparagraphs under paragraph (a) should be edited to state:

a) Participate fully in a program;

b) Take advantage of a service;

c) Live in a dwelling; or

d) Use and enjoy a dwelling.

STAFF RESPONSE: There is no objection to this suggestion. Change made in the text.

COMMENT: We think that §60.209(d) could be clarified by replacing the words 'although not those requested' with the words 'even if not requested'.

STAFF RESPONSE: Text has been changed to read "although not requested."

COMMENT: We think that §60.209(e) could be clarified by adding ', increase rent,' before the words 'or place conditions'.

STAFF RESPONSE: Staff believes the change is not necessary. Charging a fee includes increasing rent.

COMMENT: In the second Example in §60.209, in order to use modern, "people first" language, we recommend deleting the words 'disabled residents' and replacing them with the words 'residents with disabilities'.

STAFF RESPONSE: Agreed. Change made in text.

COMMENT: In the final Example in §60.209, in order to use modern, "people first" language, we recommend deleting the words 'is a quadriplegic' and replacing them with the words 'has quadriplegia'.

STAFF RESPONSE: Change in text to "resident with quadriplegia."

The new chapter is adopted pursuant to authority granted in Chapter 2306, Texas Government Code; specifically §2306.053 which grants the Department general rulemaking authority to carry out the powers expressly granted or necessarily implied by Chapter 2306, and §2306.6722 which requires that any development supported with a housing tax credit allocation shall comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R Part 8, Subpart C.

§60.201. Scope.

(a) The purpose of this subchapter is to provide guidance about and to ensure compliance with the requirements of §504 of the 1973 Rehabilitation Act and the Fair Housing Act in the alteration or construction of multifamily housing projects by recipients of funding from the Texas Department of Housing and Community Affairs ("the Department").

(b) No individual with a disability shall, by reason of their disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development through the department. *(Source: 24 CFR §8.1(a), 24 CFR §8.20)*

(c) This subchapter applies to all of the programs and activities of recipients of federal financial assistance from the Department of Housing and Urban Development through the programs and activities of the department, and/or any other program required to comply with §504 of the 1973 Rehabilitation Act under state law. *(Source: Texas Government Code §2306.6722 and §2306.6730, 24 CFR §8.2. See also the Civil Rights Restoration Act of 1987, 20 U.S.C. §794(b), March 22, 1988, (the amendments "make clear that discrimination is prohibited throughout entire agencies or institutions if any part receives Federal financial assistance). S. Rep. No. 64, 100th Cong., 2d Sess. 4 (1988) and Texas Government Code Chapter 2306)*

(d) Except as set forth in subsection (b) of this section, this subchapter does not apply to entities that only participate in the Housing Choice Voucher or the Enhanced Voucher programs and receive no other federal financial assistance.

(e) All entities that participate in the Housing Choice Voucher or the Enhanced Voucher programs are covered by the Fair Housing Act's prohibitions against discrimination, including the requirements that such entities:

(1) permit reasonable modifications to existing premises;

(2) make reasonable accommodations to rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; and

(3) for those properties that were designed and constructed for first occupancy after March 13, 1991, comply with the Fair Housing Act's provisions for accessible design and construction of new multifamily housing. (See §60.207(b), (c) and (d) of this subchapter)

(f) This subchapter does not apply to contracts for the procurement of goods or services by the department. *(Source: 24 CFR §8.3, Definition of Federal Financial Assistance)*

(g) There are additional requirements for compliance with §504 of the 1973 Rehabilitation Act; Title VI of the Civil Rights Act of 1964; the Fair Housing Act; the Americans with Disabilities Act; and other civil rights laws, regulations and Executive Orders by recipients of federal financial assistance. This subchapter addresses only the requirements relating to physical accessibility in new construction, alterations, and reasonable accommodations under §504 and the Fair Housing Act. Other disability-related requirements include:

(1) Operating housing that is not segregated based upon disability or type of disability, unless authorized by federal statute or executive order;

(2) Providing auxiliary aids and services necessary for effective communication with persons with disabilities; and

(3) Operating programs in the most integrated setting appropriate to the needs of qualified individuals with disabilities. See 24 CFR Part 8 for complete information. *(Source: 24 CFR §8.4)*

(h) These rules are to be performed in conjunction with the rules found in Chapter 60, Subchapter A, of this title.

§60.202. Definitions.

The following terms are used for purposes of this subchapter:

(1) Accessible route--A continuous unobstructed path connecting accessible elements and spaces in a facility or building that complies with the space and reach requirements of an applicable accessibility standard. In cases of rehabilitation, an accessible route is not required to serve units that are occupied by persons with hearing or vision impairments. *(Source: 24 CFR §8.3 Definitions. Definition of Accessible Route)*

(2) Alteration--Any physical change in a facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts and extraordinary repairs. It does not include normal maintenance or repairs, reroofing, interior decoration, or changes to mechanical systems. *(Source: 24 CFR §8.3 Definitions. Definition of Alteration)*

(3) Disability--A physical or mental impairment that substantially limits one or more major life activities; or having a record of such an impairment; or being regarded as having such an impairment. Nothing in this subpart requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. *(Source: 24 CFR §8.3 Definitions. Definition of Individual with Handicaps. 24 CFR §§100.201, 202(d))*

(4) Federal financial assistance--Any assistance provided or otherwise made available by the department through any grant, loan, contract or any other arrangement, in the form of:

(A) Funds;

(B) Services of personnel; or

(C) Real or personal property or any interest in or use of such property, including transfers or leases of the property for less than fair market value or for reduced consideration. *(Source: 24 CFR §8.3 Definitions. Definition of Federal Financial Assistance)*

(5) Multifamily housing project--A project that includes five or more dwelling units. It does not include a single family development. A project includes the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single contract or application for federal financial assistance, or which are treated as a whole for processing purposes, whether or not located on a common site. *(Source: 24 CFR Definitions. Definition of multifamily housing project and definition of project. ADAPT v. Philadelphia Housing Authority, 2000 U.S. Dist. LEXIS 5380 (E.D. PA 2000))*

(6) Recipient--Includes a subrecipient and means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended for any program or activity directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. Recipients include private entities in partnership with recipients to own or operate a program or service. *(Source: 24 CFR §8.4 Definitions. Definition of recipient)*

(7) Replacement cost--The total development cost for construction and equipment for a newly constructed housing facility of the size and type being altered. Construction and equipment costs do not include the cost of land, demolition, site improvements, nondwelling facilities or administrative costs for project development activities. *(Source: 24 CFR §8.4 Definitions. Definition of replacement cost)*

§60.203. General Requirements.

(a) A unit is not considered to be fully accessible unless it meets the requirements of the Uniform Federal Accessibility Standards (UFAS). All units that are accessible to persons with mobility impairments must be on an accessible route. *(Source: HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs, §2-22(C)(4))*

(b) Recipients must give priority to methods that offer housing in the most integrated setting possible (i.e., a setting that enables qualified persons with disabilities and persons without disabilities to interact to the fullest extent possible). To the maximum extent feasible and subject to reasonable health and safety requirements, accessible units must be:

(1) Distributed throughout the project and site; and

(2) Made available in a sufficient range of sizes and amenities so that the choice of living arrangements of qualified persons with disabilities is, as a whole, comparable to that of other persons eligible for housing assistance under the same program. *(Source: 24 CFR §8.26)*

(c) Multifamily housing projects covered by this subchapter and built after July 11, 1988 must have a minimum of 5% of the units in multifamily housing that are fully accessible in accordance with the Uniform Federal Accessibility Standards (UFAS) and an additional 2% that are accessible to persons with visual and hearing impairments. This obligation is an absolute requirement. For buildings that fall within this category, an owner may not justify a failure to have met these requirements because of an undue financial and administrative burden. This requirement also applies to units that are newly constructed to replace demolished or uninhabitable units.

(d) Multifamily housing projects which are designed and constructed only for homeownership are not subject to the 5%/2% requirement. However, they are subject to the other requirements of this subchapter, including, but not limited to, the requirements found in §60.207(a)(2) and §60.209 of this subchapter.

(e) Multifamily housing designed and constructed for first occupancy after March 13, 1991 containing covered dwelling units must comply with the design and construction requirements of the Fair Housing Act.

(f) Covered multifamily dwelling housing is buildings consisting of four or more dwelling units if such buildings have one or more elevators and ground floor dwelling units in other buildings consisting of four or more dwelling units. *(Source: 24 CFR §8.22, HUD Handbook 4350.3, §2-35, Telesca v. Long Island Housing Partnership, 443 F. Supp. 2nd 397 (E.D. N.Y. 2006), 42 USC §3604(f)(3)). EXAMPLE 203(1): A recipient receives funding from the Department and will construct a 10 unit homeownership project. The requirement that 5% of the units are accessible to persons with mobility impairments and 2% of the units are accessible to persons with sensory impairments does not apply. However, structural changes that are needed by a purchaser with a family member who has a disability are subject to the requirement that the recipient make reasonable accommodations, including structural changes that may be necessary to enable the family to live in the unit. So a request that a ramp be constructed to access the front porch of a homeownership unit to accommodate the disability of a 12 year old resident or prospective resident must be provided as a reasonable accommodation, unless the accommodation presents an undue financial and administrative hardship or constitutes a fundamental alteration of the program. In addition, if some or all of the units are covered by the design and construction requirements of the Fair Housing Act, those units must comply with the requirements.*

§60.204. Other Limitations Relating to Alterations.
When alterations are considered for a project:

(1) Recipients are not required to make structural changes where other methods, which may not cost as much, are effective in making federally assisted housing programs or activities readily accessible to and usable by persons with disabilities.

(2) In choosing among available methods for meeting the requirements of this section, the recipient shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate. *(Source: 24 CFR §8.4(d)). EXAMPLE 204(1): A resident who uses a wheelchair wishes to participate in the Family Self-Sufficiency program at the local housing authority. However, the sessions are held in an older building with three steps up to the front door, and inaccessible public restrooms. The resident requests that a ramp be constructed and that the public men's bathroom have an accessible stall added. Instead, the housing authority moves the site for the Family Self Sufficiency program to an accessible location.*

(3) Undue burden.

(A) The determination of undue financial and administrative burden must be made on a case-by-case basis, involving various factors, such as the cost of the reasonable accommodation, the financial resources of the provider, the benefits the accommodation would provide to the requester, and the availability of alternative accommodations that would adequately meet the requester's disability-related needs. *(Source: HUD Handbook 4350.3, §2-43(B)). For more examples of undue financial and administrative burden, see HUD Handbook 4350.3, Exhibit 2-6.*

(B) In considering whether an expense would constitute an undue burden:

(i) Payment for alterations from operating funds, residual receipts accounts, or reserve replacement accounts must be sought using appropriate approval procedures.

(ii) The approved amount must normally be able to be replenished through property rental income within one year without a corresponding raise in rental rates.

(iii) A projected inability to replenish an operating fund account or the reserve for replacement account within one year for funds spent in providing alterations under this subchapter is some evidence that the alteration would be an undue financial and administrative burden. *(Source: HUD Handbook 4350.3, §2-43(C), and the first example following §2-43(D))*

(C) If providing accessibility would result in an undue financial and administrative burden, the recipient must still take other reasonable steps to achieve accessibility.

(D) If a structural change would constitute an undue financial and administrative burden, and the tenant still wants that particular change to be made, the tenant must be allowed to make and pay for the accommodation. *(Source: HUD Handbook 4350.3, §2-45(B))*

(i) EXAMPLE 204(2): Each entrance to existing pre-1988 units is reached by a number of steps. Estimates of the cost of making any of the units accessible are high. The project rental income will not cover the cost of making the units accessible without a rent increase or a reduction in services or benefits to other tenants. However, the project has a large residual receipts account. Therefore, the operator of the housing could request approval to use money from this account to remove the steps and replace them with a ramp or chairlift. The owner receives HUD approval for this use and makes the alterations.

(ii) EXAMPLE 204(3): In the same situation, the project does not have funds in its residual receipts account, but it has a large reserve for replacement account. However, the estimate is large enough that a rent increase would be required in order to replenish the account completely within one year. It would be an undue financial and administrative burden for the project to make a unit accessible. The owner must explore alternatives to making its program accessible but is not required to make the structural changes. The tenant must also be permitted to make the requested changes at the tenant's expense.

(iii) EXAMPLE 204(4): A high rise project that was built before 1988 has no units that comply with UFAS. In order to make one of its units large enough to comply with UFAS, it would be required to rehabilitate the property substantially and eliminate at least one unit. The loss of income from the rental unit would present a serious financial hardship to the property and there are inadequate funds in the relevant accounts. The property is not required to meet the 5% requirement. It must meet the requirement that 2% of its units are accessible to persons with sensory impairments, and it must make reasonable accommodations to meet the needs of individuals with disabilities.

(iv) EXAMPLE 204(5): A project seeks funding for rehabilitation of the property from the Department. The project includes in its request all structural alterations that are necessary to ensure compliance with this section. A property that receives funding for accessible features from the Department may not assert that providing those features is an undue financial and administrative burden if it receives funding to undertake those alterations. The other provisions in this section with respect to limitations on alterations apply.

(v) EXAMPLE 204(6): A project receives funding for rehabilitation of the property from the Department. The property already has 5% of the units that are UFAS compliant. No additional rehabilitation for accessibility need be conducted.

(vi) EXAMPLE 204(7): A project receives funding for repair of the waste disposal system at the property from the Department. Because the funding does not cover alteration of structural elements but only repair of an existing system, no accessible elements need be provided. *(Source: HUD Handbook 4350.3, §2-43(C), Exhibit 2-6)*

(4) Recipients are not required to install an elevator solely for the purpose of making units accessible. *(Source: HUD Handbook 4350.3, §2-37(E))*

(5) Recipients do not have to make mechanical rooms and similar spaces accessible when, because of their intended use, they do not require accessibility by the public, by tenants, or by employees with physical disabilities. *(Source: HUD Handbook 4350.3, §2-37(D))*

(6) Recipients are not required to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member. *(Source: 24 CFR §8.32(c). HUD Handbook 4350.3, §2-37(B)). EXAMPLE 204(8): A property built before 1988 has no units that comply with UFAS. An assessment of the property indicates that no units can be made accessible to persons with mobility impairments because of the existence of load bearing interior and exterior walls which prevent construction of accessible exterior doorways. Therefore, no units must be made accessible to persons with mobility impairments except to the extent that they are made as a reasonable accommodation for a person with a disability. An owner must, however, take other reasonable steps to insure program accessibility, including in some cases, making additional units accessible in other buildings operated by the owner.*

§60.205. Substantial Alteration.

When a recipient undertakes alterations to one or more structural elements in a project that contains fifteen or more units, which was built before July 11, 1988 and which lacks the required minimum of 5% of units that are accessible to persons with mobility impairments, it must meet accessibility requirements. If the total cost of the alterations is 75% or more of the replacement cost of the completed property, then the recipient must make a minimum of 5% of the units in the property accessible for persons with mobility impairments, and a minimum of 2% of the units accessible for persons with visual and hearing impairments. These units must comply fully with UFAS. *(Source: 24 CFR §8.23-(a), HUD Handbook §2-35(E)(1)). EXAMPLE 205(1): The total development cost for a planned alteration of a 40 unit apartment building with no accessible unit amounts to $80,000 per unit and the replacement cost per unit is $100,000. Because the cost of the alterations is more than 75% of the replacement cost of the unit, the recipient must make a minimum of 5% of the 40 units, or at least two, of the units accessible to persons with mobility impairments by compliance with UFAS and at least 2%, or one unit, accessible to people with visual and hearing impairments.*

§60.206. Renovation of Elements.

When a recipient has a project which was built before July 11, 1988 and that contains five or more units but lacks the required 5% of units that are accessible to people with mobility impairments, when the recipient undertakes alterations to a structural element that are not substantial as defined in §60.205 of this subchapter:

(1) Those alterations must be accessible, to the maximum extent feasible, until at least 5% of the units are fully accessible for persons with mobility impairments. If the 5% requirement is met, no other structural alterations are required to units except to provide reasonable accommodations to individuals with disabilities.

(2) If alterations of single elements (such as replacement of a bathtub or a door) or spaces (such as kitchens or bathrooms) occur in a single unit and when the alterations are considered as a group amount to an alteration of the entire unit, the recipient must make the entire dwelling unit accessible until 5% of the units are accessible to persons with mobility impairments.

(3) When the recipient is not altering the entire unit, all of the single elements or spaces that are being altered must be made accessible unless at least 5% of the units in the project already comply fully with the UFAS, requirements for persons with mobility impairments. If at least 5% of the units comply with UFAS, no additional single elements need be made accessible except to provide reasonable accommodation for an individual with a disability.

(4) Recipients are encouraged to examine existing units for compliance with UFAS and ensure that at least 5% of the units in a property are accessible. When at least 5% of the units comply with UFAS requirements for accessibility, individual elements need not comply with accessibility requirements when they are altered.

(5) Recipients are encouraged, but not required, to make at least an additional 2% of the units being altered comply with UFAS requirements for persons with hearing and vision impairments, if such units do not already exist.

(6) Completion of minor maintenance required to maintain a property in a decent, safe and sanitary condition is generally considered to be normal repairs and not alteration. *(Source: 24 CFR §8.23, HUD Handbook 4350.3, Handbook 4350.3, §2-35(E)(2), HUD Handbook 4315.1, Rev 1, Chg 2, page 10-14, 24 CFR §8.3, Definition of Alteration)*

(A) EXAMPLE 206(1): A property is remodeling all of the bathrooms throughout the property by replacing plumbing, fixtures, and cabinets. Remodeling the bathroom is an alteration to a space. Unless the property already has a minimum of 5% of its units that comply with UFAS to serve people with mobility impairments, 100% of the bathrooms remodeled must be made accessible until the property has a minimum of 5% of its units compliant with UFAS.

(B) EXAMPLE 206(2): A property is remodeling all of the kitchens throughout a property by replacing stoves and refrigerators. Because this is not an alteration to a structural element, no structural elements must be made accessible.

(C) EXAMPLE 206(3): A property is renovating its heating system by replacing furnaces, ductwork and vents. This is not an alteration that triggers compliance with this section because it is the replacement of a mechanical system.

(D) EXAMPLE 206(4): A property has 100 units and 6 of the units are for persons with mobility impairments. They comply with UFAS and are on an accessible route. The property is remodeling all of the bathrooms throughout the property by replacing plumbing, fixtures, and cabinets. None of the remodeled bathrooms need be made

accessible because the property already has at least 5% of its units that comply with UFAS.

(E) EXAMPLE 206(5): A property that was built before 1988 has 100 units and none of them comply with the UFAS requirements. The property is replacing all of the roofs as part of regularly scheduled maintenance and repair. No units are required to be made accessible because the work being performed is regular maintenance and repair. Reroofing is specifically not considered an alteration.

(F) EXAMPLE 206(6): A property has 100 units and only three of those units (or 3%) comply with UFAS for persons with mobility impairments. The property is renovating 10 units, but the cost of renovation is only 50% of the cost of replacing the completed property, so this is not a substantial alteration. Because the entire unit is being renovated, two of the renovated units must comply with UFAS in order to provide a minimum of 5% of the total number of units that are accessible to people with mobility impairments.

§60.207. New Construction and Additions of Units.

(a) A project consisting of all newly constructed multifamily housing of five or more units constructed after July 11, 1988 shall comply with the accessibility requirements in §60.203(c) of this subchapter. When a recipient adds one or more units to existing multifamily housing, as an addition that is structurally connected to the existing housing, the following requirements apply. A project consisting of existing multifamily housing units, together with one or more newly constructed multifamily housing units that are structurally attached to the existing housing, shall be designed and constructed to provide accessibility to persons with disabilities, as follows:

(1) The project including the existing units and the newly constructed units in an addition must, when taken as a whole after the construction of the additional units, have at least 5% of units that are accessible for persons with mobility impairments and at least 2% of its units that are accessible for persons with sensory impairments.

(2) All accessible units must be on an accessible route, and must comply with UFAS requirements. *(Source: 24 CFR §8.22)*

(b) All covered multifamily dwelling units that are newly constructed for first occupancy, after March 13, 1991 including additions of four or more units, must be designed and constructed to comply with the Fair Housing Act's design and construction requirements, regardless of funding.

(c) Multifamily dwelling units are all dwelling units in buildings containing four or more dwelling units if the buildings have one or more elevators and all ground floor units in other buildings containing four or more units, without an elevator. *(Source: 24 CFR §100.205, www.fairhousing.org)*

(d) Compliance with a set of standards identified by the U.S. Department of Housing and Urban Development as meeting or exceeding the Fair Housing Act Accessibility Guidelines will provide compliance with this subchapter's accessibility requirements. Compliance with local building code requirements does not assure compliance with this subchapter. *(Source: 24 CFR §100.201, §100.205, www.fairhousingfirst.org)*

§60.209. Reasonable Accommodations.

(a) A reasonable accommodation is an alteration, change, exception, or adjustment to a program, service, building, dwelling unit, or workplace that will allow a qualified person with a disability to:

(1) Participate fully in a program;

(2) Take advantage of a service;

(3) Live in a dwelling; or

(4) Use and enjoy a dwelling.

(b) To show that a requested accommodation may be necessary, there must be an identifiable relationship between the requested accommodation and the individual's disability.

(c) When a resident or applicant requires an accessible unit, feature, space or element, or a policy modification, or other reasonable accommodation to accommodate a disability, the recipient must provide and pay for the requested accommodation, unless doing so would result in a fundamental alteration in the nature of the program or an undue financial and administrative burden. A fundamental alteration is a modification that is so significant that it alters the essential nature of the provider's operations.

(d) If a particular accommodation would result in an undue financial and administrative burden or fundamentally alter the program, the recipient must explore whether other accommodations, although not requested, can meet the needs of the person with a disability.

(e) A recipient may not charge a fee or place conditions on a resident or applicant in exchange for making the accommodation.

(f) A reasonable accommodation that amounts to an alteration should be made to meet the needs of the individual with a disability, rather than any particular minimum code specification.

(g) If a recipient refuses to provide a requested accommodation because it is either an undue financial and administrative burden or would result in a fundamental alteration to the nature of the program, the recipient shall engage in an interactive dialogue with the requester to determine if there is an alternative accommodation that would adequately address the requester's disability-related needs. If an alternative accommodation would meet the individual's needs and is reasonable, the recipient must provide it. *(Source: HUD Handbook 4350.3, §2-39, §2-40, 24 CFR §8.33, Secretary v. Country Manor, HUDALJ 05-98-1469-8 (September 20, 2001))*

(1) EXAMPLE 209(1): A resident requires an accessible parking space that will accommodate her wheelchair-equipped van. A reasonable accommodation includes relocating and enlarging an existing parking space that will serve the van.

(2) EXAMPLE 209(2): A project has five parking spaces located outside the main entrance to the building and another parking lot with 20 spaces a half block away. All five of the parking spaces near the entrance to the building have been assigned to residents with disabilities who need a parking space near their door because of their disabilities. A sixth tenant with difficulty in walking long distances moves into the project and requests a parking space near his door. The recipient has explored the options and concluded that the only way to provide more parking spaces near the door would be to widen the parking area by purchasing valuable real estate next door. It would be an undue financial and administrative burden for the recipient to provide the sixth tenant with a parking space near the entrance. An alternative accommodation could be to provide the sixth tenant with an assigned parking space in the lot half block away until such time as one of the five spaces near the door becomes available.

(3) EXAMPLE 209(3): A resident needs grab bars at the toilet in her bathroom. She does not require other accessible features. The recipient must install grab bars consistent with the resident's needs in the bathroom.

(4) EXAMPLE 209(4): A resident needs a ramped entrance to her ground floor unit to accommodate her wheelchair. She does not wish to move to an accessible unit. The recipient must provide an accessible entrance at the resident's current unit, unless it would

be an undue financial and administrative hardship or a fundamental alteration of the program to do so.

(5) EXAMPLE 209(5): A resident uses a scooter type wheelchair which is 38 inches in width. She requests a ramp to enter her ground floor unit. The ramp which she requests must be at least 40 inches wide, it must have a slope of no more than 3%, and the landing at the front door, which opens outward, must be enlarged to provide adequate maneuvering space to enter the doorway. The changes must be provided, even though they may exceed the usual specifications for such alterations.

(6) EXAMPLE 209(6): A resident with quadriplegia requests replacement of a bathtub in his unit with a roll-in shower. Due to the location of existing plumbing in the building and the size of the existing bathroom, a plumber confirms that installation of a roll-in shower in that unit is impossible. The on-site manager meets with the resident to explain why the roll-in shower cannot be installed and to explore alternative accommodations with the resident.

(h) Housing Tax credit Properties that are not layered with additional federal funds are not subject to any provision identified in this section.

§60.210. Certifications and Effect of Non Compliance.

(a) Compliance with the provisions of this subchapter is included in the certifications required in the Certification of Program Compliance found in Chapter 60, Subchapter A, §60.103 of this title.

(b) Failure to comply with the provisions of this subchapter shall be addressed by the rights and remedies found in Chapter 60, Subchapter C of this title.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 74. ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

16 TAC §§74.10, 74.20, 74.25, 74.26, 74.50, 74.55, 74.60, 74.70, 74.75, 74.80, 74.85, 74.100

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to existing rules at 16 Texas Administrative Code, ("TAC"), Chapter 74, §§74.20, 74.25, and 74.55 regarding the elevators, escalators, and related equipment program as published in the August 10, 2007, issue of the *Texas Register* (32 TexReg 7854), without changes, and will not be republished.

The Commission also adopts amendments to existing rules at 16 TAC, Chapter 74, §§74.10, 74.50, 74.60, 74.70, 74.75, 74.80, 74.85, and 74.100, and new rule §74.26 with changes from the rules as published in the August 10, 2007, issue of the *Texas Register* (32 TexReg 4854) and are being republished.

Senate Bill 1729, 80th Legislature amended Health and Safety Code, Chapter 754 to authorize the Commission to adopt recent versions of applicable safety codes, and it authorized the Department to grant variances to the codes for new technological improvements. The Commission adopts amendments to accommodate those statutory changes, and it has made changes to clarify the rules.

Section 74.10 is amended at paragraphs (2) through (4) and (7) to add the correct references to specific versions of the codes and to add a reference to §74.100 where the most recent versions of the codes are adopted. Paragraph (5) is amended to add the correct reference to ASME A17.2-2001 and to add language specifying that the currently published edition is the one to use. Paragraph (10) is amended by adding the word "alteration" to the list of the types of work a contractor performs. Paragraph (11) is amended to add a reference to the ASCE Safety Code. New paragraph (14) is added to include a definition of "Inspector". Old paragraph (16) is deleted to remove the definition of unsafe elevator and the paragraph is replaced with new paragraph (17) to define a reportable condition. This change is made because some inspectors have been hesitant to label an elevator as unsafe. The purpose of the definition is not to label elevators but to define the types of things that must be reported to the Department. New paragraph (18) is added to define the term "New Technology Variance" as provided in Senate Bill 1729.

Section 74.20 is amended at subsection (d) to change the word "determined" to "required".

Section 74.25 is amended by deleting subsection (d) which will become new §74.26 with one addition. Section 74.25 will now provide contractor registration requirements while §74.26 will provide reporting requirements for contractors.

New §74.26(a)(3) now includes the requirement that quarterly reports only include jobs not previously reported. New subsection (b) provides that contractors are not required to file reports concerning certain exempt equipment. New subsection (c) requires contractors to report to the building owner and the Department any reportable condition they encounter.

Section 74.50(a)(2) is amended by deleting the phrase, "in a building", to eliminate unneeded language. Subsection (a)(3) is amended to replace the phrase, "have been corrected or are under contract to be corrected" with language requiring the owner to verify that violations cited in an inspection report have been addressed in compliance with §74.70(a)(3). Subsection (b) is amended by capitalizing the word "Delay". New subsection (f) is added to require that owners notify the Department when needed corrections that were granted a delay by the Department have been made.

Section 74.55 is amended at subsection (a) to require inspectors to provide a copy of the inspection form to the Department and the building owner within ten calendar days of the inspection, and a reference to providing notice when an inspector finds equipment without a decal has been deleted, but is now included in subsection (b). Subsection (b) requires reports of equipment

found without a decal to be made within 72 hours of the discovery. Old subsection (b), now subsection (c) is amended to change the reference to "unsafe" to "reportable condition" to comply with the definition change described above, and the report may now be made by e-mail, fax letter or telephone. Old subsection (c) is deleted since the requirement to provide a report to the building owner is now included in subsection (a).

Section 74.60 is amended at subsection (a) to use the correct citation to the codes and to capitalize the word "department" and to add the term "alter" in two places the list of functions performed under contract. The same addition has been made to subsections (b), and (c) and the references to the codes have been changed in subsection (c). Subsection (c) is also amended to change the word "the" to "these" that appears before the word "rules". Subsection (d) is amended by deleting the last sentence of the subsection; it is moved to new subsection (g). Subsection (e)(1) is amended by changing the word "the" that appears before "rules" to "these". Subsection (e)(6) is amended by deleting the phrase "or complete an equipment contract" and the word "registrant" is replaced with the term "inspector registrant". Subsection (e)(7) is amended by deleting the word "the" that appears before the word "obtaining", and changing the word "of" to "for" that appears before "the building". New subsection (f) is added to prohibit an inspector from inspecting equipment if the inspector's employer has a contract to install, maintain, repair, alter, or replace the equipment. New subsection (g) is added to include language deleted from subsection (d) above.

Section 74.70(a) is amended to more clearly state the responsibilities of a building owner, and to include items deleted elsewhere in the rules. The effect is that their responsibilities are stated in one location rather than being sprinkled throughout the rules. Subsection (b) is amended to more clearly define the inspection interval and to reference the adopted codes as set out in §74.100. Subsection (c) is amended to reference the adopted codes as set out in §74.100. Subsection (d) is amended to replace the word "their" appearing before the word "representative" with the words "the owner's", and to add a provision regarding the circumstances under which equipment suffering an accident may be returned to service. Subsection (e) is amended to reference the adopted codes as set out in §74.100 and to delete language defining who may perform tests since those requirements are set out in the codes. Subsection (f) is amended to change the references to unsafe elevators to elevators having a reportable condition, to change the notification requirement from 48 hours to 24 hours, and to add a requirement that such equipment be reinspected and recertified, and to require the owner to verify that the reportable condition has been corrected before the equipment is returned to service. Subsection (g) is amended to reference the adopted codes as set out in §74.100 and to require that new installations be free of violations of the codes unless the violation is the subject of a Delay, a Waiver, or a New Technology Variance. Subsection (h), which deals with altered equipment has been amended in the same fashion as subsection (g). Subsection (i) has been amended to require that equipment must be tested to determine compliance with adopted codes. Subsection (k)(2) has been amended to make it clear that the section applies to escalators. Subsection (m) has been amended to more clearly set the conditions under which an owner must have equipment reinspected and recertified. There are no substantive changes.

Section 74.75(a)(2) is amended to change the reference from ASME A17.2-2001 to the currently published edition of ASME A17.2. Subsection (a)(7) is deleted as its provisions are now in §74.70. Subsection (b)(4) is amended to make it clear that the official equipment inspection form is not to be used to report inspection results of elevators in single-family dwellings, federal facilities or those that are construction use only. Subsection (c)(1) is amended in its several subsections to clarify and correct the procedure for application of test tags and seals. Subsection (c)(2)(D) is amended to clarify the process for replacement of lost or destroyed decals.

Section 74.80(f) is amended by capitalizing the word "department" where it appears in the section in four places. New subsection (h) is added to provide a fee for an application for a New Technology Variance. New subsection (i) is added to provide a fee for appealing denial of a variance application.

Section 74.85(a) is amended to correct language and to more clearly state the Department's responsibilities. Subsections (a)(2)(A) and (C) are amended to state the Department's duty to review reports and applications that are received rather than having that duty for submitted by a building owner. Subsection (c), which established continuing education requirements for QEI certified inspector, has been deleted since QEI inspectors must have continuing education administered by the QEI certifying entity in order to maintain QEI inspector status. New subsection (c) is added to set out the procedure for Department review of New Technology Variance requests and appeals of application denials. New subsection (e) is added to provide that the Department may require inspectors to attend training seminars on law and rules. New subsection (f) is added to provide that such seminars where attendance by inspectors is not mandatory may be conducted.

Section 74.100(a) is amended to add "repair, replacement and testing" to the list of operations covered by the adopted codes and to delete the word "new" and the phrase "installed or altered on or after September 1, 2003", and to change the reference to ASME A17.1-2000 to ASME A17.1-2007/CSA B44-07. Old subsection (b) is deleted and a new subsection (b) is added with a list of sections in ASME A17.1-2007/CSA B44-07 that are not adopted by the Commission. Subsection (c) is added to establish the dates that the adopted codes will become effective in Texas.

The Department drafted and distributed the proposed amendments and new rule to persons internal and external to the agency. The proposal was published in the *Texas Register* on August 10, 2007. The comment period closed on October 1, 2007. Ten individuals and two organizations filed comments suggesting changes to the proposed rules as published and are discussed below.

Eight of the individuals and one organization, The University of Texas Health Science Center at San Antonio (UTHSCSA), objected to proposed §74.60(e)(11) which would prohibit registered inspectors from performing inspections when the inspector and the person performing the tests are employed by the same company, and asked that the rule be eliminated. There were no comments in support of the rule. Six of the individual commenters noted that no conflict of interest exists when the same company employs the inspector and the test performer. Seven individuals and UTHSCSA noted that implementation of the proposed rule would have a strong negative impact on business operations and three of them were concerned that its implementation would result in loss of their jobs. Three of them expressed concern that the rule would cause scheduling nightmares for their employers. UTHSCSA asked that the rule be amended to exclude institutions of higher education that employ, "a licensed

qualified elevator maintenance staff." Proposed §74.60(e)(11) is deleted based on the nature of comments received.

UTHSCSA also requested that §74.60(f) be amended to add the same exemption it proposed for §74.60(e)(11). Its concern is that hiring outside inspectors will increase its costs. That rule only prohibits inspectors from performing inspections on equipment if the inspector's employer also has a contract to install, maintain, etc. that equipment. UTHSCSA owns its elevators and its qualified inspectors are not prohibited by the rule from inspecting those elevators; there is no maintenance, etc. contract involved. The advisory board recommended that the word, "tests" be deleted. That change is made. No other change is made in response to the comment.

Another individual commenter addressed five provisions of the proposed rules. The first is a suggestion to add the words "inspection" and "testing" to the definition of "contractor" found at §74.10(10). The term "contractor" is defined in Chapter 754, Health and Safety Code at §754.011(12) and those words are not included in the definition. The statutory list of functions a contractor performs is repeated in the rule and the Commission may not expand that list by rule. No change is made.

The second rule provision is §74.60(e)(11) and the commenter's concerns have been addressed in the paragraph above. The commenter also suggested if the rule is not deleted that it be amended to soften the prohibition.

The third provision addressed is §74.60(f) with a proposal that the term "may not" be replaced with "shall not". The commenter is concerned that the prohibition in the section may not be mandatory as it is worded. The code construction statute at Government Code §§311.016 provides that the term "may not" is synonymous with the term "shall not". No change is made.

The fourth rule provision addressed is the deletion of six sections of ASME A17.1-2007/CSA-B44-07 that is accomplished by adding paragraphs (2), (3), (4), (5), (6), and (7) to §74.100(b). The deleted requirements address testing emergency or standby power for elevators, even though the code does not require such power for elevators. Those same testing requirements are set out in building codes typically enforced by municipalities or other local governments. The result is that building owners often are required to bear the expense of testing under a building code and then bear an additional expense to test the same functions under ASME A17.1. No change is made.

The fifth provision is a suggestion to eliminate the word "rule" when it refers to code requirements to avoid confusion. The commenter's point is well taken and, accordingly §74.75(b)(3) is amended to read: "(3) The inspector must list all ASME Code violations by code number and code edition for each unit inspected, and include a written description of the violation on the Department Form. If the ASME Code refers to another code, the inspector must list both code numbers and include a written description of the violation."

Another commenter suggested five amendments to the published rules. The first is a suggestion that a new paragraph (5) be added to §74.25(d) to require contractors to report to the Department when the contractor removes a control panel with a decal affixed. Since no change related to this comment was proposed, the Commission may not include the suggested amendment for the first time in an adopted rule. No change is made.

The second is a suggestion to amend §74.70(a)(3)(C) to change the requirement that an approved waiver or delay for any violation not corrected within 60 days must have been obtained, to require that an application for a waiver or delay be submitted. Health and Safety Code §754.016(c)(1) requires that inspected equipment must comply with the applicable codes except for waivers or delays that have been granted and noted on the certificate. No change is made.

The third is to add subsection (a)(1)(D) to permit an approved waiver or delay from a previous inspection. Since subparagraph (C) discussed above makes no distinction regarding the date a required delay or waiver was granted, the suggested subsection is not needed. No change is made.

The fourth is a suggestion that §74.75(a)(3) be amended to replace the deleted word "agent" since the owner is often not available at a building. The definition of "owner" in §74.10 includes the owner's agent and the word is not needed here. No change is made. The commenter also suggested that the rule be amended to require the inspector to report building owner contact information. Section 74.75(b)(2) requires the inspector to file a completed form which includes spaces for building owner information. No change is made.

The fifth suggestion addressed §74.100 though the commenter did not suggest any specific language changes he did inquire whether the portion adopting A17.3-2002 could be amended to exclude Section 1.5. He also inquired whether the statutory changes in Health and Safety Code §754.014 create a conflict because of the effective dates of ASME A17.1/CSA B44-07. No conflict has been created by the amendments to the statute. The Commission may not except any part of ASME A17.3-2002 since it was not included in the authority granted by the legislature in SB 1729, 80th Legislature to revise versions of other codes. No change is made.

Another commenter proposed twenty-six changes to the published rules. The first is to amend §74.10(4) to add "/CSA-B44" to the reference to ASME A17.1. The commenter correctly notes that the cite is not complete and §74.10(4) will be amended to read: "(4) ASME A17.1--The ASME A17.1/CSA-B44-07 - "Safety Code for Elevators and Escalators" as adopted in §74.100".

The second is to amend §74.60(10) to add the word "testing" to the definition of contractor. The term "contractor" is defined in Chapter 754, Health and Safety Code at §754.011(12) and that word is not included in the definition. The statutory list of functions a contractor performs is repeated in the rule and the Commission may not expand that list by rule. No change is made.

The third is to amend §74.10(18) to delete the words "Deferral of" from the definition of Variance, New Technology. Senate Bill 1729, 80th Legislature, authorizes the Department to establish procedures to grant variances for new technology that is not yet included in the adopted standards if the applicant can demonstrate that the new technology is equivalent to or superior to the standards adopted by the Commission. The concept the department has developed for issuance of variances is an extension of a concept that already exists in the statute. Deferral of immediate compliance with some standards is allowed when the owner has entered into a contract to remedy a non-compliant situation. For new technology variances, deferral of immediate compliance is an approach that accommodates new technology while providing a mechanism for returning to the status that existed before the grant of a variance if, after use, the new technology is found to present a safety risk. Deletion of the reference to deferral in

the definition would render unworkable the approach set out in the rules for new technology. The Elevator Advisory Board also recommended deletion of the concept of deferral. See the Advisory Board Recommendation section below for a discussion of its position. No change is made.

Two changes are made to this proposed rule in response to other comments, set out below, regarding the nature of variances. Commenters noted that logically related concepts should be treated as one variance rather than requiring each piece of equipment to have a variance. This point is well taken and §74.10(18) is changed to include that concept. Further, the Advisory Board recommended a change to §74.80 to address situations where variances are requested for more than one system. The point is well taken, but the change should not be in a fee rule. Accordingly, §74.10(18) has been amended to read: "(18) Variance, New Technology--Deferral of compliance with a requirement of the applicable ASME/ASCE Safety Codes to allow the installation of new technology if the new component, system, sub-system, function or device is found to be equivalent or superior to the standards adopted in §74.100. A new technology variance, once granted, may be applied to all like equipment installed in the state and a separate variance is not required for each installation. A variance applies to only one component, system, sub-system, function, or device. For example, one seeking a variance for a door system, a control system, and a suspension system would be required to file three separate variance applications."

The fourth is to add a new subsection (b) to §74.26 to make it clear that contractors are not required to report to the Department operations on equipment in certain exempted locations. The point is well taken and §74.26(b) is changed to read, "(b) Contractors are not required to file a report with the Department regarding the items listed in subsection (a) above for equipment located in a single-family dwelling, for construction-use only elevators or equipment in a building owned and operated by the federal government." The following subsections are relettered.

The fifth is a suggestion to add to §74.26, old (b), the phrase, "in writing" and to strike the reference to reporting by telephone. The commenter was concerned that a telephone report cannot be memorialized. The Department is able to record telephone calls. No change is made.

The sixth is a suggestion to add to §74.50(a)(3) the phrase, "or are under contract to be corrected." That subsection requires that the report indicate that the violations cited are in compliance with §74.70(a)(3). One of the ways to be in compliance is to have a contract to correct the violation. No change is made.

The seventh is a suggestion to amend §74.50(f) to add the phrase "by e-mail, fax, letter" to the requirement to report in writing that a violation that was the subject of a delay has been corrected. The commenter offered this to make it consistent with other reporting requirements in the rules. In this case, unlike others, a telephone report is not allowed. No change is made.

The eighth is a suggestion that §74.55(a) should have a reference to equipment that is found without a decal since the commenter notes that uninspected elevators still exist. The requirement to report to the department equipment that is found without a decal, and thus is uninspected, is set out in §74.55(b). No change is made.

The ninth is to amend §74.55(b) to delete a reference to reporting by telephone and to add a requirement that the report be in writing. The commenter was concerned that a telephone report cannot be memorialized. The Department is able to record telephone calls. No change is made.

The tenth is a suggestion to amend §74.60(a) to refer to ASME and ASCE codes differently. Both this commenter and the National Elevator Industry, Inc., (NEII) whose comments are discussed below, made this suggestion, which is well taken. Accordingly, §74.60(a) is changed to read: "(a) *Competency*. The registrant shall be knowledgeable of and adhere to the Act, these rules, the ASME Safety Codes or ASCE Standards as adopted in §74.100, and all procedures established by the Department for equipment inspections or performance of a contract to install, alter, repair, or maintain equipment. It is the obligation of the registrant to exercise reasonable judgment and skill in the performance of equipment inspections or performance of a contract to install, repair, or maintain equipment."

The eleventh is a suggestion to amend §74.60(c) in the same fashion as subsection (a) above. The same change is made for that subsection.

The twelfth comment is a statement of support for §74.60(f) as published. No change is made in response to this comment although another change discussed below is made.

The thirteenth is a suggestion to amend §74.70(a)(3)(B) to delete the requirement that all work under a contract to correct violations be completed before the next inspection due date and add a requirement that the work be completed within 90 days of the inspection. The commenter feels that up to one year to correct violations is too long. When equipment presents a reportable condition, and thus is unsafe for use by the public, it must placed out of service and may not be used until the condition has been repaired and the equipment has been inspected. Violations that may be dealt with by use of a contract to repair tend to be technical or of the sort that do not pose a safety hazard. Allowing the owner to have that sort of violation remedied before the next inspection facilitates budget planning and non-emergency scheduling of repairs thereby reducing costs to owners without endangering the public. No change is made.

The fourteenth is a suggestion that §74.70(d) be amended to clarify the language and to remove gender specific language. The same comment was made by NEII. The rule is amended to read: "(d) The building owner or the owner's representative must report all accidents, as defined in Texas Health and Safety Code, §754.011, involving equipment to the Department, using a Department approved form, within 72 hours of the accident. If the accident results in serious bodily injury or a fatality, the equipment shall be removed from service and shall not be moved (except as necessary to extricate an injured party or effect a life-saving rescue) or returned to service until a representative of the Department completes an investigation and issues an approval to return the unit to service."

The fifteenth is a suggestion to amend §74.70(e) to add the words, "codes and" before the word, "standards". The change as proposed is made.

The sixteenth is a suggestion to amend §74.70(g) to add the words, "of the codes and standards" after the word, "requirements". The change as proposed is made.

The seventeenth is a suggestion to amend §74.70(h) as in (g) above. The change as proposed is made.

The eighteenth is a suggestion to amend §74.70(i) as in (g) above. The change as proposed is made.

The nineteenth is a suggestion that §74.70(n) be amended to delete the requirement that Waivers, Delays and Variances be posted in the machine room and to make them part of the maintenance control plan that must be readily available to maintenance personnel. Waivers, delays, and variances should be available to elevator maintenance personnel in the machine room without their having to seek out building personnel to gain access to a maintenance control plan, which is not required to be kept in the machine room. No change is made.

The twentieth is a suggestion that §74.75(a)(1) be amended in the same fashion as §74.60(a) above. The same change is made for this subsection.

The twenty-first is to make the same change to §74.75(a)(2) that was suggested for subsection (a)(1) above. The same change is made for this subsection.

The twenty-second is to delete the word "safety" from §74.75(a)(5). That change is made.

The twenty-third is to amend §74.75(c)(1)(F) to the same change as in §74.75(a)(1) above. That change is made.

The twenty-fourth, twenty-fifth, and twenty-sixth is to change various existing fees set out in §74.80. There were no fee changes proposed in the rule. To add such changes at this time would be to exceed the scope of the notice affected by the publication of the proposed changes. No changes are made in response to these comments.

The twenty-seventh is a suggestion to amend §74.80(h) to change the proposed fee from $2500 to $200, and to add a provision that when a variance is granted for a given type of new technology it will apply to all like equipment in the state. The proposed fee for new technology applications is intended to cover the costs to the Department associated with reviewing the application and accompanying literature, which will be considerable, seeking out materials from experts in the field to corroborate and differentiate the positions set out in the presented literature, conducting stake holder focus groups when necessary, possibly obtaining expert advice to assist the Department in assessing the merits of an application, and performing the myriad administrative tasks associated with the process. After actual experience processing such applications, the Department will review the costs of administering such applications and will make any adjustments needed. The Department is charged through the Chapter 51, Occupations Code with assuring that the fees charged for each of its programs are set to cover costs of the program. The Department has a history of reducing its fees when an audit of a program's costs and revenues indicates that fees are generating more revenue than required. No change to the proposed fee is made. The second proposal under this comment is one that has been addressed in responses to §74.10(18) above, and the change has been made.

The twenty-eighth is a suggestion that §74.85(c) be amended to provide that new technology applications are needed only for items not included in ASME A17.7/CSA B44-07. The commenter notes that items set out in that code have already been reviewed by experts thereby saving the Department from having to assess applications. Yet, there remains under the commenter's proposal the strong likelihood that a variance application for technology not included in the code will be made and the rule proposed will provide no guidance for processing it. No change is made.

The twenty-ninth is a suggestion that §74.85(c)(1)(A-E), and (c)(2) be deleted. The rationale is that if the new technology meets the provisions of the code recommended by the commenter the application should be granted. Under the circumstances described, there would be no need for an application process; the adopted code already provides for it. As discussed above, new technology applications under the commenter's proposal are probable. Yet the rule will provide no guidance. No change is made.

The thirtieth is a suggestion that §74.85(c)(3) be amended to delete the provision requiring the Department to provide an itemization of specific variances to code provisions that are granted. If the two recommendations above were followed, this one would be acceptable. Since they are not, this section should remain in order clearly to establish the scope of variances granted. No change is made.

The thirty-first is a suggestion that §74.100(a) be amended to add ASME A17.7/CSA B44-07 to the list of adopted codes. Staff does not recommend that this code be adopted at this time. No change is made.

The thirty-second is a suggestion to delete from §74.100(b)(1) a provision deleting from an adopted code references to ASME A17.7/CSA B44-07 and the requirements of 1.2.1 (c) of the adopted code. If the section remains in the adopted code, ASME A17.7/CSA B44-07 will have been adopted through the back door so to speak. No change is made.

NHII proposed all of the items discussed below. The first is to add a definition of "Variance Application" to §74.10. The term "variance application" does not require a definition. To the extent that the proposed rule would have substantive effect such as including in the application a recommendation of the Advisory Board, those matters can be addressed in the substantive rules addressing new technology variances. No change is made.

The next suggestion is to amend §74.10(18) to amend the definition of "Variance, New Technology" in several ways. The first is to change "Variance, New Technology" to "Variance". The commenter argues that the variance procedure authorized by statute should not be limited to new technology. The statute, however, at Health and Safety Code, §754.014(m) provides that variances may be granted, ". . . to allow the installation of new technology if the new component, system, subsystem, function, or device is equivalent or superior to the standards adopted by the Commission." The variance process is available only for new technology.

The second is to delete from the definition the concept of deferral. Senate Bill 1729, 80th Legislature, authorizes the Department to establish procedures to grant variances for new technology that is not yet included in the adopted standards if the applicant can demonstrate that the new technology is equivalent to or superior to the standards adopted by the Commission. The concept the Department has developed for issuance of variances is an extension of a concept that already exists in the statute. Deferral of immediate compliance with some standards is allowed when the owner has entered into a contract to remedy a non-compliant situation. For new technology variances, deferral of immediate compliance is an approach that accommodates new technology while providing a mechanism for returning to the status that existed before the grant of a variance if the new technology after use is found to present a safety risk. Deletion of the reference to deferral in the definition would render unworkable the approach set out in the rules for new technology. No change is proposed.

The commenter also proposed that a variance be a modification of existing code. Since the legislature provided the Commission with authority to grant variances for new technology, a limited form of modification of codes, the Commission may not expand that authority to include modifications for any reason. No change is made.

The next suggestion is to amend §74.10(19) to delete the phrase "Deferral of compliance with" and have it read, "Waiver of a requirement. . ." The response to the proposed deletion of references to "deferral" discussed above in connection with §74.10(18) is applicable here. The commenter also suggested that the issuance and enforcement of waivers should be discontinued. The statute authorizes the grant of waivers in some circumstances and requires them in others. Health and Safety Code, §754.014(g) and (h) provide the authority and requirement, respectively, for waivers. No changes are made.

The next suggestion is to amend §74.80(h) to reduce the fee for a waiver application to a range of $50 to $175, to allow one variance to apply to all like equipment, and to provide for an appeal of a variance denial. The proposed fee for new technology applications is intended to cover the costs to the Department associated with reviewing the application and accompanying literature, which will be considerable, seeking out materials from experts in the field to corroborate and differentiate the positions set out in the presented literature, conducting stake holder focus groups when necessary, possibly obtaining expert advice to assist the Department in assessing the merits of an application, and performing the myriad administrative tasks associated with the process. After actual experience processing such applications, the Department will review the costs of administering such applications and will make any adjustments needed. The Department is charged through the Appropriations Act with assuring that the fees charged for each of its programs are set to cover costs of the program. The Department has a history of reducing its fees when an audit of a program's costs and revenues indicates that fees are generating more revenue than required. No change to the proposed fee is made.

The commenter noted that logically related concepts should be treated as one variance rather than requiring each piece of equipment to have a variance. This point is well taken and the Commission has included the change to address this concern, but not in §74.80. Rather, §74.10(18) is amended to add this language: A new technology variance, once granted, may be applied to all like equipment installed in the state and a separate variance is not required for each installation.

The commenter's request for an appeals fee is also well taken and §74.80 is changed to add an appeals fee. In addition, §74.85 is changed to establish the right to and the procedure for an appeal. Proposed language for the appeals process will be set out below in the response to the next suggestion. In addition, §74.80(h) is amended to remove language that indicates that a variance will apply to only one piece of equipment. Staff proposes that §74.80(h) and new (i) read as follows: "(h) The fee for a Variance - New Technology application is $2,500."; and "(i) The fee to file an appeal of a denial of an application for a Variance - New Technology is $200."

The next suggestion is to amend §74.85(c) in a number of ways. The commenter asked that references to new technology be eliminated. See response to proposed changes to §74.10(18) above. Further, the commenter proposed that the Elevator Advisory Board be required to participate in an application process upon request of the Commission, the Department or the applicant. The duties of the board as set out in statute are to advise the Commission on four enumerated subjects and any matter considered relevant by the Commission. The Commission chooses to exercise that fifth matter on a case-by-case basis rather than imposing a requirement by rule. The commenter also proposed that the variance process be set out in a separate rule rather than being included in a subsection of a rule setting out the Department's responsibilities. No changes are made in response to those comments.

Section 74.85 is changed to add paragraph (4)(C) to read as follows:

(4) Appeal of Variance Denial.

(A) A denial of a Variance Application may be appealed to the Executive Director in writing within thirty (30) calendar days from issuance, upon payment of the applicable appeal fee. Supporting documentation such as the Variance Application and all documentation filed to support the application may be submitted for consideration.

(B) A denial of a Variance Appeal by the Executive Director may be appealed to the Texas Commission of Licensing and Regulation in writing within ten (10) calendar days of notification of the Executive Director's decision. Supporting documentation such as the Variance Application and all documentation filed to support the application may be submitted for consideration. The appeal will be considered at the next available scheduled meeting of the Commission.

(C) When a Variance Appeal determination has been made, the applicant shall be advised in writing of the determination.

(D) The Executive Director's decision regarding the Variance Application is final and binding on the applicant and Department."

NEII also made twenty-six other comments about the rules.

The first is that §74.10 should include definitions of "ASCE" and "ASCE 21". Section 74.10(3) is changed to read as follows:

(3) Code Providers

(A) ASCE--American Society of Civil Engineers;

(B) ASCE 21--Automated People Mover Standards; and

(C) ASME--American Society of Mechanical Engineers.

The second is to amend §74.10(2) to delete the new proposed language to make it clear that repairs and replacements made as part of an alteration is to be treated as such. The commenter notes the adopted code clearly defines alteration. Nonetheless, there has been some confusion in the past on this point. No change is made.

The third is that §74.10(4) be amended to properly refer to the code. That change is made.

The fourth is that §74.10(11) be amended to change "ASME/ASCE" to "ASME Safety Codes or ASCE Standards". That change is made.

The fifth is to amend §74.10(14) to include in the definition of inspector that an inspector must be QEI certified. The statute already provides that requirement. No change is made.

The sixth and seventh is to amend §74.10(16) to keep the language of the current rule rather than using the proposed rule. The rule as published was changed to remove the definition of unsafe elevator and to add a definition using the term, "reportable condition". This change was proposed because some

inspectors have been hesitant to label an elevator as unsafe. The purpose of the definition is not to label elevators but to define the types of things that must be reported to the Department. No change is made.

The eighth is to amend §74.50(a)(3) to more accurately refer to the codes as discussed above. That change is made.

The ninth is to amend §74.50(f) to replace the concept of delay with the concept of variance. The statute at Health and Safety Code §754.014(e) and (f) require the Department to grant delays. No change is recommended. Also, the commenter suggested that the requirement that the Department be notified in writing when the violation giving rise to the need for the delay has been corrected be changed to notification by e-mail, fax or telephone to make it consistent with other notice provisions. This notice requirement is different because delays are granted and tracked differently by the Department. No change is made.

The tenth is to amend §74.55(c) to remove the term "with a reportable condition" and replace it with "to be unsafe". See the response to six and seven above. No change is made.

The eleventh is to amend §74.60(a) to change the reference to the codes as described above. The change is made.

The twelfth is to amend §74.60(c) to change the code references. The change is made.

The thirteenth is a five part suggestion to amend §74.70(a). First to amend paragraph (2) to remove the term "reportable condition". See the response to six and seven above. No change is made. Second is to amend paragraph (3) to require someone to apprise the owner of violations cited in the inspection report. The statute at Health and Safety Code §754.019 requires an owner to obtain an inspection and to obtain an inspection report. The rule simply requires the owner to address all violations by having g them repaired or having a contract to repair them. No change is made. Third is to amend paragraph (3)(A) to add language allowing an owner to notify the Department when a violation cannot be corrected within 60 days. The choices in the statute are to have the violation corrected or to have a contract to have it corrected. The allowance for a contract provides relief when scheduling or budget issues preclude immediate repair. No change is made. Fourth is to drop the provision allowing a contract as provided by Health and Safety Code §754.019(b)(2). No change is made. Fifth is to renumber paragraph (3)(C) as subsection (a)(4). No change is made.

The fourteenth is to amend §74.70(b) to add language to require equipment to be in compliance with the standards in place at the time of installation or alteration. The language of ASME A17.1/CSA B44-07 already addresses this concern since it provides that the provisions of the code in effect at the time of installation or alteration apply to equipment under consideration. No change is made.

The fifteenth is to amend §74.70(c) to remove the reference to standards adopted in §74.100 and refer to applicable codes. See response to fourteen above. No change is made.

The sixteenth is to amend §74.70(d) to remove a gender specific reference. The rule is changed to read: "(d) The building owner or the owner's representative must report all accidents, as defined in Texas Health and Safety Code, §754.011, involving equipment to the Department, using a Department approved form, within 72 hours of the accident. If the accident results in serious bodily injury or a fatality, the equipment shall be removed from service and shall not be moved (except as necessary to extricate an injured party or effect a life-saving rescue) or returned to service until a representative of the Department completes an investigation and issues an approval to return the unit to service."

The seventeenth is to amend §74.70(e) to remove the reference to standards adopted in §74.100 and refer to applicable codes See the response to fourteen above. No change is made.

The eighteenth is to amend §74.70(f) to remove references to "reportable Condition". See the response to six and seven. No change is made.

The nineteenth is to amend §74.70(g) to remove references to "waiver", "delay", and "new technology". See the first three responses to this commenter and the response to number nine above.

The twentieth is to amend §74.70(h) to remove references to "waiver", "delay", and "new technology". See the first three responses to this commenter and the response to number nine above.

The twenty-first is to amend §74.70(m) to remove references to "reportable condition". See the response to six and seven. The commenter also suggested the deletion of paragraph (3). That paragraph was added in an earlier version of rule amendments to deal with the perception that items in a cab such as wall panels and flooring could be replaced without an inspection being performed. Such changes can radically alter the weight of a cab and cause it to exceed design parameter. No change is made.

The twenty-second is to amend §74.70(n) to remove references to "waiver" and "delay". See the response to nineteen above.

The twenty-third is to amend §74.80(c) to remove "waiver" and "delay". See response to nineteen above. The commenter also suggested that "or per model elevator" be added to cause waiver and delay fees to a class of equipment rather than to each piece of equipment. The cost to review and grant requests for waivers and delays is incurred on a per piece of equipment basis. No change is made. The commenter also suggested that the references to the codes be changed as discussed above. That change is made.

The twenty-fourth is to amend §74.100(a) change the reference to the codes as discussed above. The change is made.

The twenty-fifth is to delete §74.100(b)(1) which deletes from ASME A17.1/CSA B44-07 section 1.2.1 (c). If the section remains in the adopted code, ASME A17.7/CSA B44-07 will have been adopted through the back door so to speak. No change is made.

The twenty-sixth is to amend §74.100(e)(3) to provide an effective date. That code was adopted in the statute and the Commission does not have authority to adopt any version printed since the one described in statute. No change is made. The commenter also suggested adding a new subsection to provide by rule an effective date for ASCE 21. As with A17.3, the Commission has no authority to adopt versions changed since the date the legislature adopted it. No change is made.

The Elevator Advisory Board met on November 27, 2007 to review and discuss the public comments and staff recommendations regarding those comments. The board recommended eleven changes to the changes that were proposed by staff in response to the comments set out above.

The first is to change the definition of Variance, New Technology at §74.10(18) to replace the concept of deferral of compli-

ance with the concept of an alternative method of compliance. The board also recommended that the phrase, "for an indefinite period of time" be inserted after the word, "technology". That phrase was originally proposed to make it clear that a deferral had no time period associated with it.

The concept the department has developed for issuance of variances is an extension of a concept that already exists in the statute. Deferral of immediate compliance with some standards is allowed when the owner has entered into a contract to remedy a non-compliant situation. For new technology variances, deferral of immediate compliance is an approach that accommodates new technology while providing a mechanism for returning to the status that existed before the grant of a variance if the new technology, after use, is found to present a safety risk. Deletion of the reference to deferral in the definition would render unworkable the approach set out in the rules for new technology. The concept of deferral was used to make it clear that a variance is not permanent. No change is made.

The second was to capitalize the first word of the second sentence in the definition discussed above. That change is made.

The third is to change §74.60(a) to insert the word "alter" in the second sentence after the word "install". This change was proposed to make the second sentence of the subsection consistent with the first sentence where the published rule included the insertion of the word "alter". That change is made.

The fourth is to delete the word "tests" from §74.60(f). That change is made.

The fifth is to add the phrase "New Technology" before the word "Variances" in §74.70(n). That change is made.

The sixth is to replace the phrase "Inspectors' Manuals" with the title "Guide for Inspection of Elevators, Escalators, and Moving Walks" in §74.75(a)(2). That change is made.

The seventh is to amend §74.80(h) in two respects. The first is to correct the spelling of the word "Technology". That change is made. The second is to add this sentence, "For example, an applicant who applies for a variance of the following: door system, control system, and suspension system, would require three applications." The advisory board expressed concern that the rules lacked clarity with regard to limits on the reach of a variance. The Commission agrees that greater clarity is needed and additional language is added to §74.10(18) rather than adding clarifying language to a fee rule. The following language is added to the definition, "A variance applies to only one component, system, sub-system, function, or device. For example, one seeking a variance for a door system, a control system, and a suspension system would be required to file three separate variance applications."

The eighth is to change §74.85(c)(3) by adding this sentence. "If not approved, the Department shall outline the reasons for denial." That change is made.

The ninth and tenth propose a change to the appeal process that was proposed by staff in response to comments. The proposed process was to provide for appeal of a denial of an application for a New Technology Variance to the Director of Compliance and then to the Executive Director whose determination would be final. The Advisory Board proposed that the process begin with the Executive Director and then go to the Commission whose determination would be final. The board also proposed that the Commission be required to place an appeal on its next agenda. The Commission agrees in part with the board's proposal and has changed the appeals process as set out above in response to the comment suggesting an appeals process. The Executive Director will decide appeals and his decision is final though an applicant may request review by the Commission. The Commission's determination on review will be provided in writing to the applicant.

The eleventh change is to delete subsection (b)(1) from §74.100. The effect would be that the provisions of ASME A17.7/CSA B44-07 (A17.7) will be in effect in Texas. Section 74.100(b)(1), as published, deletes ASME A 17.1/CSA B44-07 (A17.1) requirement 1.2.1 (c), which provides that A17.7 may be followed to establish that equipment that does not meet requirements of A17.1 is permissible. The legislature has not adopted A17.7, which, according to included language, is intended to be, ". . . particularly useful for establishing safety of elevator systems, sub-systems, components, or functions involving innovative design and new technologies." Instead, the legislature has provided the Commission with authority to develop by rule a procedure for evaluating applications for use of new technology, and approving those applications when the applicant demonstrates that the new technology is equivalent or superior to the standards adopted by the Commission. A person wishing to employ new technology in jurisdictions where A17.7 applies may select an entity approved or designated by ANSI, ASME, or SCC to operate a certification program to review the technology. If the selected entity certifies the new technology, it may be used without further review or consideration. The legislature could have included A17.7 in the list of codes that the Commission is to consider when it adopts standards for equipment. Since it did not do so and since it provided another path for consideration and approval of new technology, A17.7 should not be allowed to apply in Texas. This change is not made.

In response to questions asked by the Elevator Advisory Board's Rules Work Group, §74.100(c)(1) and (c)(2) are changed by replacing the dates of April 1, 2008 with September 1, 2008.

The amendments and the new rule are adopted under Texas Health and Safety Code, Chapter 754 and Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Health and Safety Code, Chapter 754 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adoption.

§74.10. Definitions.

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

(1) The Act--Texas Health and Safety Code, Chapter 754, Elevators, Escalators, and Related Equipment.

(2) Altered Equipment--Any changed equipment, including its parts, components, and/or subsystems, other than maintenance, repair, or replacement. However, the term does include any repairs and replacements performed as part of any alteration(s).

(3) Code Providers

(A) ASCE--American Society of Civil Engineers;

(B) ASCE 21--Automated People Mover Standards; and

(C) ASME--American Society of Mechanical Engineers.

(4) ASME A17.1--The ASME A17.1/CSA B 44-07 - "Safety Code for Elevators and Escalators" as adopted in §74.100.

(5) ASME A17.2--The currently published edition of "The Guide for Inspection of Elevators, Escalators, and Moving Walks".

(6) ASME A17.3--The ASME A17.3-2002, "Safety Code for Existing Elevators and Escalators."

(7) ASME A18.1--The ASME 18.1, "Safety Standards for Platforms Lifts and Stairway Chairlifts" as adopted in §74.100.

(8) Automated People Mover (APM)--a guided transit mode with fully automated operation, featuring vehicles that operate on guideways with exclusive right of way.

(9) Building Owner--The person or persons, company, corporation, authority, commission, board, governmental entity, institution, or any other entity that holds title to the subject building or facility. For purposes under these rules and the Act, an owner may designate an agent.

(10) Contractor--A person, partnership, company, corporation, or other entity engaging in the installation, alteration, repair, or maintenance of equipment. The term does not include an employee of a contractor.

(11) Delay--Postponement of compliance with a requirement of the applicable ASME Safety Codes or ASCE Standard as adopted in §74.100, for a specific period of time.

(12) Existing Equipment--equipment installed or altered before September 1, 1993.

(13) Inspection report--A Department approved form used by the inspector to report the inspection results of one unit of equipment.

(14) Inspector--A person engaged in the inspection of equipment for the purpose of determining compliance with these rules and adopted standards.

(15) New Equipment--equipment installed or altered on or after September 1, 1993.

(16) Publicly visible area of building--a location that is visible to the public in an elevator car or a common area lobby or hallway and accessible to the public at all times when any elevator is in operation, without the need for the viewer to obtain assistance or permission from building personnel.

(17) Reportable Condition--a condition which exists where a defect requires the equipment to be removed from operation to prevent a risk of serious injury to passengers, operators, or the general public.

(18) Variance, New Technology--Deferral of compliance with a requirement of the applicable ASME/ASCE Safety Codes to allow the installation of new technology if the new component, system, sub-system, function or device is found to be equivalent or superior to the standards adopted in §74.100. A new technology variance, once granted, may be applied to all like equipment installed in the state and a separate variance is not required for each installation. A variance applies to only one component, system, sub-system, function, or device. For example, one seeking a variance for a door system, a control system, and a suspension system would be required to file three separate variance applications.

(19) Waiver--Deferral of compliance with a requirement of the applicable ASME Safety Codes for an indefinite period of time.

§74.26. Reporting Requirements--Contractor.

(a) Contractors must submit to the Department reports regarding installation, repair, alteration, or maintenance jobs on a format approved by the Department.

(1) An initial report is due no later than 60 days of the application date and must include all jobs performed by the contractor during the two years prior to the application date.

(2) Quarterly reports are due each calendar year in accordance with the following schedule.

(A) 1st quarter--April 30

(B) 2nd quarter--July 31

(C) 3rd quarter--October 31

(D) 4th quarter--January 31 of the next year.

(3) Quarterly reports must only include all jobs performed in the quarter which have not been previously reported to the Department.

(b) Contractors are not required to file a report with the Department regarding the items listed in subsection (a) above for equipment located in a single family dwelling, for construction-use only elevators or equipment in a building owned and operated by the federal government.

(c) Contractors shall, by e-mail, fax, letter or telephone, report to the Building Owner and Department, within 24 hours of discovery, all equipment they encounter that has a reportable condition.

§74.50. Reporting Requirements--Building Owner.

(a) To obtain a Certificate of Compliance, the building owner must submit to the Department within 60 days of the equipment inspection date, the following items:

(1) the application for Certificate of Compliance;

(2) a copy of the inspection reports for each unit of equipment;

(3) written documentation to verify that all violations of the applicable ASME Safety Codes or ASCE Standards as adopted in §74.100, cited on the inspection report, are in compliance with §74.70(a)(3);

(4) any application(s) for Delay or Waiver if applicable; and,

(5) all applicable fees.

(b) All Delay applications, received after September 1, 2003 to install door restrictor and fire service by September 1, 2010, must include the following on the delay application form or attach a statement to the delay application form:

(1) verification that the building owner has notified all tenants or occupants in the building that the elevators do not comply with the door restrictor or fire service requirements in the ASME A17.3-2002 Code and has made available to tenants or occupants upon request the building owner plan of compliance before 2010;

(2) the building owner plan of compliance before 2010; and

(3) compliance completion date.

(c) The owner shall notify the Department, in writing and within 30 days, of equipment that has been placed out of service. The equipment must be placed out of service in accordance with the definition in A17.1, *"installation placed out of service."*

(d) The owner shall notify the Department, in writing and within 30 days, of an elevator that has had alterations converting the

equipment to a material lift. The conversion shall comply with the applicable sections of A17.1.

(e) The owner shall notify the Department, in writing and within 30 days, of a material lift that has had alterations converting the equipment to an elevator. The elevator must be inspected and brought into compliance with A17.1 as a new installation.

(f) When a Delay has been approved, the owner shall notify the Department, in writing within 30 days of the date of correction.

§74.60. Standards of Conduct for Inspector or Contractor Registrants.

(a) *Competency*. The registrant shall be knowledgeable of and adhere to the Act, these rules, the ASME Safety Codes or ASCE Standards as adopted in §74.100, and all procedures established by the Department for equipment inspections or performance of a contract to install, alter, repair, or maintain equipment. It is the obligation of the registrant to exercise reasonable judgment and skill in the performance of equipment inspections or performance of a contract to install, alter, repair, or maintain equipment.

(b) *Integrity*. A registrant shall be honest and trustworthy in the performance of equipment inspections or performance of a contract to install, alter, repair, or maintain equipment, and shall avoid misrepresentation and deceit in any fashion, whether by acts of commission or omission. Acts or practices that constitute threats, coercion, or extortion are prohibited. The registrant shall accurately and truthfully represent to any prospective client his/her capabilities and qualifications to perform the services to be rendered.

(c) *Interest*. The primary interest of the registrant is to ensure compliance with the Act, these rules, and the ASME Safety Codes or ASCE Standards adopted in §74.100, and all procedures established by the Department. The registrant's position, in this respect, should be clear to all parties concerned while conducting equipment inspections or completing the performance of a contract to install, alter, repair, or maintain equipment.

(d) *Conflict of Interest*. A registrant is obliged to avoid conflicts of interest and the appearance of conflicts of interest. A conflict of interest exists when an inspector performs or agrees to perform equipment inspections for a building in which he has a financial interest, whether direct or indirect. A conflict of interest also exists when a registrant's professional judgment and independence are affected by his/her family, business, property, or other personal interests or relationships.

(e) *Specific Rules of Conduct*. A registrant shall not:

(1) participate, whether individually or in concert with others, in any plan, scheme, or arrangement attempting or having as its purpose the evasion of any provision of the Act, these rules, or the Standards adopted by the Commission;

(2) knowingly furnish inaccurate, deceitful, or misleading information to the department, a building owner, or other person involved in equipment inspections or equipment contracts;

(3) state or imply to a building owner that the department will grant a delay or waiver;

(4) engage in any activity that constitutes dishonesty, misrepresentation, or fraud while performing equipment inspections or completing an equipment contract;

(5) perform equipment inspections or complete an equipment contract in a negligent or incompetent manner;

(6) perform equipment inspections in a building or facility in which the inspector registrant is an owner, either in whole or in part;

(7) perform equipment inspections in a building or facility wherein the registrant, for compensation, participated in obtaining an equipment contract for the building;

(8) indulge in advertising that is false, misleading, or deceptive;

(9) misrepresent the amount or extent or prior education or experience to any client; or

(10) hold out as being engaged in partnership or association with any person unless a partnership or association exists in fact.

(f) An inspector registrant may not perform inspections upon equipment for which the inspectors' employer also has a contract to perform installations, maintenance, repairs, replacements or alterations on that equipment.

(g) An inspector registrant shall withdraw from employment when it becomes apparent that it is not possible to faithfully discharge the duty and performance of services owed the client, but then only upon reasonable notice to the client.

§74.70. Responsibilities of the Building Owner.

(a) The building owner shall:

(1) obtain the services of an inspector registered with the Department to perform inspections in accordance with §74.75 and §74.100;

(2) keep the equipment free from reportable conditions;

(3) have all violations cited on an inspection report;

(A) corrected within 60 calendar days of the date of inspection;

(B) have them under contract to be corrected and all work completed not later than the next inspection due date; or

(C) have an approved waiver or delay.

(b) The owner of the building in which equipment is located shall have such equipment inspected at an interval not to exceed every twelve (12) months to determine compliance with the applicable standards adopted in §74.100.

(c) The owner of the building in which the equipment is located must have available all maintenance and inspection records and maintenance control programs for the equipment during the life of the equipment as required by the applicable standards adopted in §74.100. These records and programs shall be available in the building.

(d) The building owner or the owner's representative must report all accidents, as defined in Texas Health and Safety Code, §754.011, involving equipment to the Department, using a Department approved form, within 72 hours of the accident. If the accident results in serious bodily injury or a fatality, the equipment shall be removed from service and shall not be moved (except as necessary to extricate an injured party or effect a life-saving rescue) or returned to service until a representative of the Department completes an investigation and issues an approval to return the unit to service.

(e) The building owner shall ensure that all of the tests required by the applicable codes and standards adopted in §74.100 are performed.

(f) If any equipment is determined to have a reportable condition by inspection or other means, the building owner shall notify the Department in writing within 24 hours, and shall place the unsafe equipment out of operation until repairs to correct the reportable condition(s) are completed. After repairs have been completed, the building owner shall have the equipment re-inspected and re-certified and sub-

mit written verification to the Department that the reportable condition has been corrected before returning the equipment to service.

(g) New equipment installations must be inspected and tested to determine their safety and compliance with the requirements of the codes and standards as adopted in §74.100 before being placed in service. The equipment shall be free of any violations, unless a Waiver, Delay or New Technology Variance has been granted by the Department in writing, before being placed in service.

(h) Altered equipment must be inspected and tested to determine its safety and compliance with the requirements of the codes and standards as adopted in §74.100 before being placed back in service. The equipment shall be free of any violations, unless a Waiver, Delay or New Technology Variance has been granted by the Department in writing, before being placed back into service.

(i) Equipment must be tested to determine its safety and compliance with the requirements of the codes and standards as adopted in §74.100.

(j) The owner of the building in which equipment is located must obtain a yearly certificate of compliance from the Department evidencing that each unit of equipment in the building is in compliance with the Act and all applicable rules and standards. The owner of the building must have a current Certificate of Compliance in order to operate equipment located in the building.

(k) The building owner must display the current Certificate of Compliance:

(1) if the certificate relates to an elevator,

(A) inside the elevator car not more than 7’0" or less than 3’0" above the finished car floor;

(B) outside the elevator car in the main elevator lobby within 10 feet of the elevator call button; or

(C) in a common area lobby or hallway location that is:

(i) accessible to the public without assistance or permission during all hours in which any elevator is in operation and

(ii) identified by a plaque mounted in the elevator car or within 10 feet of the elevator call button in the main elevator lobby. The font size for letters on the plaque shall be at least 18 and the plaque must state that the elevator is regulated by the Texas Department of Licensing and Regulation and include the department’s telephone number 1-800-803-9202 and the building management’s telephone number.

(2) if the certificate relates to an escalator, in a common area lobby or hallway location that is:

(A) accessible to the public without assistance or permission during all hours in which any escalator is in operation and

(B) identified by a plaque mounted within 10 feet of entry and exit of escalator in the main escalator lobby. The font size for letters on the plaque shall be at least 18 and the plaque must state that the escalator is regulated by the Texas Department of Licensing and Regulation and include the department’s telephone number 1-800-803-9202 and the building management’s telephone number.

(3) on the box containing the control circuitry if the certificate relates to a chairlift, platform lift, automated people mover operated by cables, moving sidewalk, or related equipment.

(l) The building owner must display an inspection report at the location defined in subsection (k), selected by the owner, until a current certificate of compliance is issued by the Executive Director.

(m) The building owner must have equipment re-inspected and re-certified if the equipment:

(1) has been altered;

(2) has been determined to have a reportable condition;

(3) has had any alteration made to the interior of elevator car enclosures or flooring; or

(4) inspection report shows an existing violation has continued longer than permitted in a delay granted by the executive director.

(n) The building owner shall have copies of all current department issued Waivers, Delays, and New Technology Variances posted in the machine room/machinery space in a readily accessible and visible location available to elevator personnel.

§74.75. Responsibilities of the Inspector.

(a) Inspection procedures.

(1) The inspector must inspect all equipment for compliance with the applicable ASME Safety Codes or ASCE Standards as adopted in §74.100.

(2) Inspectors must use the currently published edition of ASME A17.2, and the "Guide for Inspection of Elevators, Escalators, and Moving Walks" to conduct inspections and witness tests for compliance with the ASME Safety Codes or ASCE Standards adopted in §74.100.

(3) The inspector shall report to the building owner before beginning any inspections.

(4) The inspector and the building owner must sign and date the inspection report.

(5) The inspector shall not perform any of the tests.

(6) On new or altered equipment installations, the inspector may perform an inspection prior to the installation being completed. However, on these installations the Department will only accept inspection reports for final inspections performed by the inspector after the installation is completed.

(b) Department forms.

(1) The inspector must use current Department approved forms for reporting inspections.

(2) The Department forms shall be filled out completely, and shall be used to report the inspections of existing equipment and final inspections of new or altered equipment.

(3) The inspector must list all ASME Code violations by code number and code edition for each unit inspected, and include a written description of the violation on the Department Form. If the ASME Code refers to another code, the inspector must list both code numbers and include a written description of the violation.

(4) The inspector may not use the official elevator equipment inspection form to report the results of an inspection to the owner of equipment located in a single-family dwelling, construction-use only elevator, or Federal Facility.

(c) Inspector’s Equipment.

(1) Test Tags

(A) The inspector must purchase test tags from the Department and shall be the person who attaches these tags to the inspected equipment.

(B) The inspector shall inscribe all required information on each Department test tag. Department test tags shall not be replaced until after all date and signature spaces on the tag are filled.

(C) Upon completion of the initial Acceptance test, Department test tags shall be attached to each individual piece of equipment on or adjacent to the equipment controller or main line disconnect so that it is in a conspicuous location.

(D) All devices and adjustments required to be sealed by the adopted standard shall be sealed with wire rope and lead seal by the inspector witnessing the tests(s). Once a device or adjustment has been so sealed, there shall be no need to replace the seal unless it is broken for whatever reason, whereupon an inspector shall witness the test and provide a seal as prescribed herein prior to the unit being returned to service. The lead seal shall be crimped onto the wire rope using a crimping tool bearing the Department's seal and the crimping tool number assigned to the inspector. An inspector may use the required crimping tool to seal lead seals provided by the manufacturer at the factory as long as the assigned number is legible.

(E) Inspector's equipment may be purchased from the Department for:

(i) $200 per 100 test tags (sold in multiples of 100); and

(ii) $10 per 100 wire ropes and lead seals (sold in multiples of 100).

(F) The inspector shall verify that contractor's test tags are placed on the equipment in conformance with the ASME Safety Codes or ASCE Standards adopted in §74.100.

(2) Decals

(A) Each unit of equipment shall be identified with a unique identification number decal issued by the Department, which the inspector must affix to the upper right hand corner of the control panel. The decal shall remain on the control panel for the life of the equipment.

(B) An additional Department decal shall not be affixed to equipment that has a current Department decal displayed.

(C) All correspondence and inspection reports shall reference the decal number and Department building ID number, as reflected on the Certificate of Compliance.

(D) If an inspector places a new decal on a unit of equipment to replace a lost or destroyed decal, the inspector must report the equipment's location, old decal number, and new decal number to the Department within ten calendar days of placing the new decal number upon the equipment.

§74.80. Fees.

(a) Inspector registration fees.

(1) original--$100

(2) renewal application--$100

(3) Revised/Duplicate registration card--$25

(b) Certificate of Compliance filing fees:

(1) submitted by building owner with a copy of inspection report within 60 days of the equipment inspection date--$30 per unit of equipment;

(2) $10 late filing fee per each unit for every thirty (30) day period if the inspection report, filing fees, and verification about correcting deficiencies in the inspection report are filed after the 90th day from the equipment inspection date, and

(3) $25 per Revised/Duplicate Certificate.

(c) Waiver/Delay application fee: $50 for each violation of the ASME Safety Codes or ASCE Standards as adopted in §74.100 per unit of equipment requested to be waived or delayed.

(d) Fees shall be charged and collected by the Department for a waiver or delay application for an institution of higher education.

(e) Contractor Registration fees

(1) original--$300

(2) renewal application--$300

(3) Revised/Duplicate registration card--$25

(f) The fee for Department personnel to disconnect power or lockout equipment in a building shall be $200 per hour. Travel and per diem costs shall be reimbursed by the building owner in accordance with the current rate as established in the current Appropriations Act. The Department shall present a billing statement to the building owner or representative after disconnecting the power or lockout that is payable upon receipt unless the Department receives in writing verification that the expenses would be paid no later that the 10th day after the date power is reconnected or equipment is unlocked. The fee for Department personnel to reconnect power or unlock equipment is the same to disconnect or lockout equipment.

(g) Late renewal fees for Inspector and Contractor registrations issued under this Chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(h) The fee for a Variance - New Technology application is $2,500.

(i) The fee to file an appeal of a denial of an application for a Variance - New Technology is $200.

§74.85. Responsibilities of the Department.

(a) When issuing Certificates of Compliance the Department shall:

(1) Assure that each certificate includes the decal number, inspection date, building name and physical address, owner name and mailing address, inspector name and QEI #, current inspection date, the date of the last inspection, the due date of the next inspection, contact information at the department to report a violation, indicate status of correcting code violations and the Executive Director's signature and date.

(2) Use the following procedures to issue a Certificate of Compliance:

(A) review inspection report and fees received by the Department;

(B) review verification submitted by building owner indicating which code violations have been remedied and which code violations are under contract to be corrected;

(C) review Waiver/Delay application and fees received by the Department;

(D) notify building owner with a Notice of Incomplete Submittal asking for any missing inspection documents and fees; and

(E) notify building owner of any denied waiver or delay requests and ask for verification that violations have been remedied or under contract to be corrected.

(F) After a determination is made that the building owner submitted an inspection report with the correct amount of filing fees and all deficiencies in the inspection report have been corrected, or under contract to be corrected, or delay or waiver granted, then a certificate of compliance is issued for each unit of equipment.

(b) The Department shall provide notification to building owners, architects, and other building industry professionals regarding the necessity of annually inspecting equipment through the Department's website, press releases, and group presentations.

(c) Prior to the installation of any device, equipment or technology not permitted by the currently adopted standards, a request for New Technology Variance must be granted by the Department.

(1) Requests for New Technology Variances shall contain the following, if applicable:

(A) an enumeration and description of all the requirements of the adopted standard for which a new technology variance is being requested;

(B) documentary evidence to support a claim of equivalence or superiority to the requirements of the adopted standard;

(C) documentary evidence that the new technology is being or may be considered by the ASME code committee(s) for inclusion in a future standard;

(D) an estimated time frame for the approval of the new technology by the ASME code committee(s);

(E) any additional supporting evidence deemed by the applicant to be necessary to assist in making a determination; and

(F) the new technology variance application fees outlined in §74.80(h).

(2) The applicant shall be advised of the status of the application, in writing, not less often than quarterly.

(3) The applicant for a New Technology Variance shall be notified of the Department's decision in writing. If approved, the notification will itemize the specific code requirement deviations for which the variance(s) are approved.

(4) Appeal of Variance Denial.

(A) A denial of a Variance Application may be appealed to the Executive Director in writing within thirty (30) calendar days from issuance, upon payment of the applicable appeal fee. Supporting documentation such as the Variance Application and all documentation filed to support the application may be submitted for consideration.

(B) The applicant may request, in writing, within ten (10) calendar days of notification of the Executive Director's decision, a review by the Texas Commission of Licensing and Regulation.

(C) When a Variance review determination has been made, the applicant shall be advised in writing of the determination.

(D) The decision of the Executive Director regarding the Variance Application is final and binding on the applicant.

(d) The Department may periodically review inspection reports to determine compliance with the applicable statutes and administrative rules.

(e) The Department may require inspector attendance at periodic rules and/or law update seminars conducted by the Department when the Executive Director determines such seminars to be necessary.

(f) The Department may conduct code, rule and law or other inspector training seminars where attendance by inspectors is not mandatory.

§74.100. Technical Requirements.

(a) The Department adopts the standards for the installation, maintenance, repair, replacement, alteration, testing, operation, and inspection of equipment that are contained in the following codes: ASME A17.1-2007/CSA B44-07 as amended below, ASME A17.3-2002, ASME A18.1-2005 and ASCE Codes 21.

(b) The following amendments shall be made to ASME A17.1-2007/CSA B44-07:

(1) Delete requirement 1.2.1(c) and all references to A17.7 within the adopted standard, preface and appendices.

(2) Delete requirement 8.10.2.2.1(q) emergency or standby power operation.

(3) Delete requirement 8.10.2.3.2(l) emergency or standby power alterations.

(4) Delete requirement 8.10.3.3.2(l) emergency or standby power alterations.

(5) Delete 8.11.2.2.7 standby or emergency power operation.

(6) Delete requirement 8.11.2.3.5 emergency and standby power operation.

(7) Delete requirement 8.11.3.2.3(f) standby power operation.

(8) Delete the reference to ASME A17.3 contained within Section 9.1.

(9) Delete Appendix E in its entirety.

(c) The effective dates of:

(1) ASME A17.1-2007/CSA B44-07 and the amendments in §74.100(b) shall be effective on September 1, 2008.

(2) ASME A18.1-2005 shall be effective September 1, 2008.

(3) ASME A17.3-2002 continues to be in effect.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 10, 2008.

TRD-200800129
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: February 1, 2008
Proposal publication date: August 10, 2007
For further information, please call: (512) 463-7348

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION
SUBCHAPTER N. REHABILITATIVE SERVICES

40 TAC §19.1306

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §19.1306, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification, without changes to the proposed text as published in the October 19, 2007, issue of the *Texas Register* (32 TexReg 7432).

The amendment is adopted to remove rule language regarding the methodology used to set reimbursement rates for specialized and rehabilitative services delivered to Medicaid-eligible individuals in nursing facilities. HHSC is the agency responsible for determining the rate-setting methodology for those services. Therefore, HHSC is adopting a related rule at 1 TAC §355.313, Reimbursement Methodology for Nursing Facility Specialized and Rehabilitative Services.

DADS received written comments from the Coalition for Nurses in Advanced Practice. A summary of the comment and the response follow.

Comment: Concerning §19.1306(b)(1) and (c)(2), a commenter requested that DADS amend these subsections to specify that a physician may delegate tasks described in those subsections to a nurse practitioner, clinical nurse specialist, or physician assistant, and include a cross reference to §19.1205(c).

Response: The agency agrees that the physician duties referenced in §19.1306(b)(1) and (c)(2) may be delegated in accordance with §19.1205(c) in Subchapter M, Physician Delegation. Section 19.1205(c) states that any required physician task in a Medicaid nursing facility may be satisfied when performed by a nurse practitioner, clinical nurse specialist, or physician assistant in accordance with applicable state laws, rules, and regulations. A statement that a physician may delegate tasks in just one section of Chapter 19 may give the impression that a physician is not allowed to delegate tasks described in other sections of the chapter. Therefore, the agency declines to make the suggested change at this time.

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 11, 2008.

TRD-200800134
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: February 1, 2008
Proposal publication date: October 19, 2007
For further information, please call: (512) 438-3734

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 34 TAC §3.834(b)

$$\text{Insurer's Assessment} = \frac{\text{Individual Insurer's Texas Net Direct Premiums Written for the Twelve-Month Period}}{\text{Total of All Insurers' Texas Net Direct Premiums Written for the Twelve-Month Period}} \times \$30 \text{ Million}$$

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.

Texas Department of Banking

Notice of Public Hearing on Proposed Repeal of Existing 7 TAC §25.25 and Proposed New §25.25

The Texas Department of Banking (Department) will conduct a public hearing to receive testimony concerning the proposed repeal of existing 7 TAC §25.25 and proposed new 7 TAC §25.25, concerning conversions from trust-funded to insurance-funded prepaid funeral contracts.

The Department will hold a public hearing on these proposals in Austin on January 29, 2008, at 10:00 a.m. at the Brown Heatly Building, 4900 North Lamar Boulevard, Room 1410, Austin, Texas 78751. The hearing is limited to discussion of the rule proposal only.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Brenda Medina at (512) 475-1332.

Written comments may be submitted to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294 or by e-mail to legal@banking.state.tx.us no later than 5:00 p.m. on February 28, 2008. Copies of the proposed rule can be obtained from the department's website at *http://www.banking.state.tx.us/legal/rules/proposed.htm*. For further information, please contact Brenda Medina at (512) 475-1332.

TRD-200800131
A. Kaylene Ray
General Counsel
Texas Department of Banking
Filed: January 10, 2008

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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 01/21/08 - 01/27/08 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 01/21/08 - 01/27/08 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-200800162
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 15, 2008

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Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application was received from DMC Credit Union (Arlington) seeking approval to merge with The Local Federal Credit Union (Dallas), with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200800176
Harold E. Feeney
Commissioner
Credit Union Department
Filed: January 16, 2008

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Application to Expand Field of Membership

Notice is given that the following application have been filed with the Credit Union Department and are under consideration:

An application was received from Star of Texas Credit Union, Austin, Texas to expand its field of membership. The proposal would permit persons who live, work, attend school, or worship and businesses within Travis County, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.tcud.state.tx.us/applications.html. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200800175
Harold E. Feeney
Commissioner
Credit Union Department
Filed: January 16, 2008

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following application:

Articles of Incorporation - 50 Years to Perpetuity--Approved

IBEW Local 681 Credit Union, Wichita Falls, Texas

TRD-200800177
Harold E. Feeney
Commissioner
Credit Union Department
Filed: January 16, 2008

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Texas Education Agency

Request for Applications Concerning the Collaborative Dropout Reduction Pilot Program

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-08-129 from eligible public school districts and open-enrollment charter schools in Texas. Eligible applicants must have a minimum of 75 percent economically disadvantaged enrollment in the district during the preceding three school years. A list of eligible districts will be posted to the TEA Grant Opportunities page at http://burleson.tea.state.tx.us/GrantOpportunities/forms/. Eligible districts may form a shared services arrangement (SSA) in order to qualify for grant funds. An SSA is limited to no more than ten eligible districts. Education service centers (ESCs) are not eligible to apply as fiscal agents for an SSA under this grant.

Description. The purpose of this application is to solicit grant applications from eligible applicants to implement a pilot program to comprehensively reduce the number of students who drop out of school, increase student job skills and employment opportunities, and provide continuing education opportunities for students who might otherwise have dropped out of school. The local collaborative dropout reduction program is designed to provide a variety of services for students in the following four service areas: workforce skill development, academic support, attendance improvement, and student and family support services.

The pilot program serves students in Grades 9-12, and at least 50 percent of the students served in the program must be identified as being at risk of dropping out of school as defined in the Texas Education Code, §29.081(d).

Programs must collaborate with one or more local businesses, other local governments or law enforcement agencies, nonprofit organizations, faith-based organizations, or institutions of higher education to deliver proven, research-based intervention strategies.

Dates of Project. The Collaborative Dropout Reduction Pilot Program will be implemented during the 2008-2009 and 2009-2010 school years. Applicants should plan for a starting date of no earlier than August 1, 2008, and an ending date of no later than May 31, 2010.

Project Amount. A total of approximately $4 million is available for funding approximately 16 projects. Each project will receive a maximum of $250,000 for the 2008-2010 grant period. This project is funded 100 percent from state funds. Awarded districts will receive a base of $50,000 to create a new program or to expand/enhance current dropout programs in accordance with the provisions of the authorizing statute, and up to $1,000 per student served by the pilot program. Districts or SSAs must serve a minimum of 20 students and can receive a maximum amount of $250,000, which includes the $50,000 base amount. Each individual collaborative partner is not required to provide matching funds. However, applicants must demonstrate total matching funds from collaborating partners of at least 10 percent of the grant amount requested.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of the RFA may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter, complete RFA, and eligibility list will also be posted on the TEA website at http://burleson.tea.state.tx.us/GrantOpportunities/forms. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Priscilla Aquino, Division of State Initiatives, Texas Education Agency, (512) 936-6060. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at http://burleson.tea.state.tx.us/GrantOpportunities/forms. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Tuesday, April 29, 2008, to be eligible to be considered for funding.

TRD-200800188
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: January 16, 2008

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Request for Applications Concerning the Texas High School Initiative, Intensive Summer Programs Pilot Program, 2008-2009

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-08-102 from school districts, open-enrollment charter schools, or shared services arrangements of school districts and/or open-enrollment charter schools with a student population of 65 percent or greater identified as

economically disadvantaged. To promote college and workforce readiness, grant recipients must design and implement an Intensive Summer Program in partnership with an institute of higher education (IHE) to prepare participating students for college and/or offer college credit opportunities.

Description. An Intensive Summer Program funded by this pilot grant program must be research-based. Programs offered at the high school level (Grades 9-12) are required to offer instruction in the following three areas: mathematics, English Language Arts, and science. Programs at the middle school level (Grades 6-8) are required to offer instruction in both mathematics and reading. Eligible districts may apply to operate either a high school program, a middle school program, or both, or may apply to operate a combined middle school and high school program that offers differentiated curriculum and instruction for middle school and high school students. Grant funds may be used to expand or enhance an existing program or to develop and implement a new program. Additional classes and other supplementary activities to meet the goals of the program are allowed. A program supported by this grant must provide rigorous instruction, provide at least four weeks of instruction, and be designed and implemented in partnership with an IHE. Programs must provide instruction in the targeted core areas for a combined minimum of three hours per day.

Dates of Project. Intensive Summer Programs will be implemented during the 2008-2009 and 2009- 2010 school years. Applicants should plan for a starting date of no earlier than June 1, 2008, and an ending date of no later than December 31, 2009.

Project Amount. Approximately $4 million in funding is available for the Texas High School Initiative, Intensive Summer Programs Pilot Program, 2008-2009. Funding will be provided for approximately 25 projects. Programs will be awarded a per-student participant amount not to exceed $750 per student for a total maximum of $150,000 for each program year of the grant period. Funding must be matched by not less than $250 for each participating student in other federal, state, or local funds, including private donations. Participating school districts are encouraged, but not required, to use funds allocated as High School Allotment funds, as designated under the Texas Education Code, §42.2516(b)(3).

Applicants may apply for less than the maximum per-student participant amount.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of the RFA may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://burleson.tea.state.tx.us/GrantOpportunities/forms. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Chris Caesar, Division of State Initiatives, Texas Education Agency, (512) 936-6434. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at http://burleson.tea.state.tx.us/GrantOpportunities/forms. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Thursday, March 20, 2008, to be eligible to be considered for funding.

TRD-200800187
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: January 16, 2008

Request for Applications Concerning the Vision 2020 Grant

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-08-104 for the Vision 2020 Grant for two separate strands: (1) Technology Immersion, and (2) the Texas Virtual School Network (TxVSN).

A Technology Immersion strand applicant must be a high-need local education agency (LEA). A high-need LEA is an LEA that (a) serves at least 2,500 or 22 percent of children from families with incomes below the poverty line as identified by the 2003 U.S. Census data; and (b) serves one or more schools identified for improvement or corrective action under the No Child Left Behind Act of 2001, Title I, §1116, or has a substantial need for assistance in acquiring and using technology as reflected in the Texas Campus STaR Chart.

A TxVSN strand applicant must be a high-need LEA or an eligible local partnership serving Grades 6-12. An education service center (ESC) is eligible to apply as fiscal agent of a shared services arrangement. A high-need LEA is an LEA that (a) serves at least 2,500 or 22 percent of children from families with incomes below the poverty line as identified by the 2003 U.S. Census data; and (b) serves one or more schools identified for improvement or corrective action under the No Child Left Behind Act of 2001, Title I, §1116, or has a substantial need for assistance in acquiring and using technology as reflected in the Texas Campus STaR Chart. An eligible partnership is a partnership that includes at least one high-need LEA and at least one of the following: (a) an LEA that can demonstrate that teachers are effectively integrating technology in the classroom and have pedagogical and technical support from the district; and that has an administration with vision, leadership, and a commitment to research-based professional development programs that increase teachers' technology integration skills and result in improvement in classroom instruction; (b) an institution of higher education that is in full compliance with the reporting requirements of the Higher Education Act of 1965, §207(f), as amended, and that has not been identified by the state as low-performing under that act; (c) a for-profit business or organization that develops, designs, manufac-

tures, or produces technology productions or services or has substantial expertise in the application of educational technology in instruction; or (d) a public or private nonprofit organization with demonstrated expertise in the application of educational technology in instruction. The partnership may also include other LEAs, ESCs, libraries, or other educational entities appropriate to provide local programs.

Description. The purpose of the Vision 2020 Grant is to provide funding for two strands: (1) Technology Immersion, and (2) the TxVSN. Technology Immersion funding will provide high-need schools with the necessary resources to create a totally immersed campus or grade level. TxVSN funding will provide high-need schools with the necessary resources to provide online learning opportunities for students and/or teachers via the TxVSN. Districts may apply for both strands, but may only receive funding for one strand. Applicants must submit a separate application for each strand.

Dates of Project. Implementation of the Technology Immersion and TxVSN programs under the Vision 2020 Grant will begin during the 2008-2009 school year. Applicants should plan for a starting date of no earlier than September 1, 2008, and an ending date of no later than June 30, 2010.

Project Amount. A total of approximately $11 million is available for funding between 20 and 50 grants. Grant award amounts will range from a minimum of $25,000 to a maximum of $500,000. This project is funded 100 percent from federal funds under the No Child Left Behind Act of 2001, Title II, Part D, Subpart 1, contingent upon appropriation by the U.S. Congress.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-08-104 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://burleson.tea.state.tx.us/GrantOpportunities/forms/ for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Linda Hello, Division of Discretionary Grants, TEA, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at http://burleson.tea.state.tx.us/GrantOpportunities/forms/.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Thursday, May 1, 2008, to be considered for funding.

TRD-200800191
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: January 16, 2008

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Texas Commission Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 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. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 25, 2008**. Section 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) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 25, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Ameri-Forge Corporation dba Texas Metal Works; DOCKET NUMBER: 2007-1971-WQ-E; IDENTIFIER: RN101622710; LOCATION: Woodville, Tyler County, Texas; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 Texas Administrative Code (TAC) §281.25(a)(4), by failing to obtain a Multi-Sector General Permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(2) COMPANY: Patrick Y. Shin dba Cedar Hill Cleaners; DOCKET NUMBER: 2007-1438-DCL-E; IDENTIFIER: RN100607845; LOCATION: Cedar Hill, Dallas County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and Texas Health and Safety Code (THSC), §374.102(e), by failing to renew the dry cleaner registration; 30 TAC §337.14(c) and THSC, §5.702, by failing to pay outstanding dry cleaner fees; PENALTY: $2,000; ENFORCEMENT COORDINATOR: John Shelton, (512) 239-2563; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: City of Corpus Christi; DOCKET NUMBER: 2007-1436-MWD-E; IDENTIFIER: RN101610327 and RN101610400; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010401004, Permit Conditions Number 2(g) and the Code, §26.121(a), by failing to prevent the unauthorized discharge of wastewater; 30 TAC §305.125(1) and (9) and TPDES Permit Number WQ0010401004, Monitoring and Reporting Requirements Number 7, by failing to provide notification of unauthorized discharges from the collection system orally; TPDES Permit Number WQ10401003, Permit Conditions Number 2(g) and the Code, §26.121(a), by failing to prevent the unauthorized discharge of wastewater from the collection system; TPDES Permit Number 10401003, Permit Conditions Number 2(g) and the Code, §26.121(a), by failing to prevent the unauthorized discharge of wastewater from the bar screen; 30 TAC §305.125(1), TPDES Permit Number 10401003, Final Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to meet the permitted single grab limit of 800 colonies per 100 milliliters for fecal coliform bacteria; 30 TAC §305.125(1) and (5) and §317.6, and TPDES Permit Number 10401003, Operational Requirements Number 1, by failing to properly operate and maintain all systems of treatment and control (and related appurtenances) installed or used to achieve compliance with permit conditions; 30 TAC §305.125(1) and (5) and §317.7(d), and TPDES Permit Number 10401003, Operational Requirements Number 1, by failing to properly operate and maintain all systems of treatment and control (and related appurtenances) installed or used to achieve compliance with permit conditions; and 30 TAC §305.125(1) and (5) and §317.7(e), and TPDES Permit Number 10401003, Operational Requirements Number 1, by failing to properly operate and maintain all systems of treatment and control (and related appurtenances) installed or used to achieve compliance with permit conditions; PENALTY: $42,810; Supplemental Environmental Project (SEP) offset amount of $42,810 applied to Coastal Bend Bays and Estuaries Program, Inc.; ENFORCEMENT COORDINATOR: Andrew Hunt, (512) 239-1203; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(4) COMPANY: FMC Corporation; DOCKET NUMBER: 2007-1530-AIR-E; IDENTIFIER: RN100215417; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §§122.143(4), 122.145(2)(C), and 122.146(2), Federal Operating Permit (FOP) Number O-02278, General Terms and Conditions, and THSC, §382.085(b), by failing to timely submit the annual compliance certification and associated deviations reports; PENALTY: $5,650; Supplemental Environmental Project (SEP) offset amount of $2,260 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: James E. Fortson; DOCKET NUMBER: 2007-1967-WR-E; IDENTIFIER: RN105359889; LOCATION: Corsicana, Navarro County, Texas; TYPE OF FACILITY: water rights; RULE VIOLATED: the Code, §11.081 and §11.121, by impounding, diverting, or using state water without a required permit; PENALTY: $350; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: INVISTA S.a.r.l.; DOCKET NUMBER: 2007-1392-AIR-E; IDENTIFIER: RN104392626; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: chemical processing; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Air Operating Permit Number O-02075, Special Condition (SC) 10, Air New Source Permit Number 1468, SC 1, and THSC, §382.085(b), by failing to prevent an unauthorized emissions event; and 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Air Operating Permit Number O-01897, SC 20, Air New Source Permit Number 1302, SC 1, and THSC, §382.085(b), by failing to prevent an unauthorized emissions event from the agitator seal; PENALTY: $11,100; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: J.C. Smith and Sons Sand and Gravel; DOCKET NUMBER: 2007-1970-WQ-E; IDENTIFIER: RN104896493; LOCATION: Livingston, Polk County, Texas; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: Louisiana-Pacific Corporation; DOCKET NUMBER: 2007-1422-AIR-E; IDENTIFIER: RN100215169; LOCATION: Jasper, Jasper County, Texas; TYPE OF FACILITY: oriented strandboard mill; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O-01198, General Terms and Conditions, and THSC, §382.085(b), by failing to submit a deviation report; PENALTY: $1,900; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: Military Highway Water Supply Corporation; DOCKET NUMBER: 2007-1387-MWD-E; IDENTIFIER: RN101611366; LOCATION: Hidalgo County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013462001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permit effluent limits; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(10) COMPANY: North Bosque Water Supply Corporation; DOCKET NUMBER: 2007-1795-PWS-E; IDENTIFIER: RN101459220; LOCATION: McLennan County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(h)(1)(A) and THSC, §341.033(e), by failing to install backflow prevention assemblies or an air gap at all residences or establishments where an actual or potential contamination hazard exists; PENALTY: $535; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: City of Pinehurst; DOCKET NUMBER: 2007-1444-MWD-E; IDENTIFIER: RN100528918; LOCATION: Pinehurst, Orange County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.126(a) and TPDES Permit Number WQ0010597001, Operational Requirements Number 8.a., by failing to initiate engineering and financial planning for expansion and/or upgrading of the wastewater treatment and/or collection facilities when the effluent daily average flow measurements reach 75% of the permitted daily average flow limit for three consecutive months; 30 TAC §305.125(5) and §317.4(b)(4) and (d) and TPDES Permit Number WQ0010597001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(5) and §317.3(e)(5) and TPDES Permit Number WQ0010597001, Operational Requirements Number 1, by failing to

ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §319.5(b) and TPDES Permit Number WQ0010597001, Monitoring and Reporting Requirements Number 1, by failing to conduct effluent sampling at the minimum frequency specified in the permit; 30 TAC §305.125(17) and TPDES Permit Number WQ0010597001, Sludge Provisions, by failing to timely submit a copy of the annual sludge report; 30 TAC §305.125(1) and TPDES Permit Number WQ0010597001, Monitoring and Reporting Requirements Number 7.c., by failing to submit noncompliance notifications; 30 TAC §317.4(a)(8) and TPDES Permit Number WQ0010597001, Monitoring and Reporting Requirements Number 3.b., by failing to retain monitoring and reporting records for three years; 30 TAC §319.11(c) and (e) and TPDES Permit Number WQ0010597001, Monitoring and Reporting Requirements Number 2, by failing to comply with test procedures for the analysis of pollutants with procedures specified in 30 TAC §319.11; and 30 TAC §305.125(1) and TPDES Permit Number WQ0010597001, Monitoring and Reporting Requirements Number 3.c.iii., by failing to include the time of analysis in the record of monitoring activities; PENALTY: $15,717; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(12) COMPANY: S & K Iman, Inc. dba Convenient Food Mart; DOCKET NUMBER: 2007-1515-PST-E; IDENTIFIER: RN101788826; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain underground storage tank (UST) records and make them immediately available for inspection; 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding USTs; and 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point; PENALTY: $2,850; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: San Angelo Feed Yard, Ltd.; DOCKET NUMBER: 2007-1414-AGR-E; IDENTIFIER: RN101513364; LOCATION: Tom Green County, Texas; TYPE OF FACILITY: beef cattle feeding operation; RULE VIOLATED: 30 TAC §321.40(k)(l) and TPDES General Permit Number TXG920349, Part III.A.11.(c)(1), by failing to apply manure at agronomic rates; 30 TAC §321.40(k)(3) and TPDES General Permit Number TXG920349, Part III.A.13.(a), by failing to have a detailed updated nutrient utilization plan; and the Code, §26.121(a), by failing to prevent the discharge of waste feed into waters in the state; PENALTY: $4,200; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(14) COMPANY: San Antonio Water System; DOCKET NUMBER: 2007-1393-PST-E; IDENTIFIER: RN103111340; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: service center; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: Smith County Water Control and Improvement District No. 1; DOCKET NUMBER: 2007-1348-MWD-E; IDENTIFIER: RN102335874; LOCATION: Smith County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010285001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a), by failing to comply with its permitted effluent limits; PENALTY: $13,275; Supplemental Environmental Project (SEP) offset amount of $10,620 applied to Audubon Society-Tyler Habitat Improvement-Langley Island; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(16) COMPANY: Targa North Texas LP; DOCKET NUMBER: 2007-1431-AIR-E; IDENTIFIER: RN102553955; LOCATION: Young County, Texas; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §101.221(a) and §106.4(c) and THSC, §382.085(b), by failing to keep emission capture and abatement equipment in good working order, functioning properly during normal operations, and operating within authorized emission limitations; PENALTY: $37,500; Supplemental Environmental Project (SEP) offset amount of $18,750 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: James Nolan, (254) 751-6634; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(17) COMPANY: TOTAL PETROCHEMICALS USA, INC.; DOCKET NUMBER: 2007-1425-AIR-E; IDENTIFIER: RN100212109; LOCATION: LaPorte, Harris County, Texas; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit 21538, SC Number 6, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(a)(1)(A) and THSC, §382.085(b), by failing to submit the initial notification of a reportable emissions event; and 30 TAC §116.115(c), Air Permit 3908B, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $17,697; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: TOTAL PETROCHEMICALS USA, INC.; DOCKET NUMBER: 2007-1593-AIR-E; IDENTIFIER: RN100212109; LOCATION: LaPorte, Harris County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit 21538, SC Number 6, and THSC, §382.085(b), by failing to prevent unauthorized emissions events; PENALTY: $8,525; ENFORCEMENT COORDINATOR: Aaron Houston, (409) 898-3838; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2007-1234-AIR-E; IDENTIFIER: RN100238385; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.715(a), Air Permit Number 39142, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $196,300; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: City of Waelder; DOCKET NUMBER: 2007-1278-MWD-E; IDENTIFIER: RN102916046; LOCATION: Waelder, Gonzales County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0014252001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits; and 30 TAC §305.125(17) and TPDES Permit Number WQ0014252001, Sludge Provisions, by failing to submit

monitoring results at the intervals specified; PENALTY: $3,200; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

TRD-200800159
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 15, 2008

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Notice of District Petition

Notices issued January 9, 2008 through January 10, 2008.

TCEQ Internal Control No. 11152007-D01; Lake Travis Ranch LLC (the "Petitioner") filed a petition for creation of Vista Municipal Utility District of Travis County (the "District") with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) the proposed District will contain approximately 670.03 acres located in Travis County, Texas; and (3) no portion of land within the proposed District is within the extraterritorial jurisdiction of any city, town, or village in Texas. The Petitioner, by separate affidavit, indicates that there are three lien holders, Rox Covert, Duke Covert, and Danay Covert, on the property to be included in the proposed District. The Petitioner has provided the TCEQ with a certificate evidencing the lien holders' consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project; and from the information available at the time, the cost of the project is estimated to be approximately $38,961,825.

TCEQ Internal Control No. 11272007-D02; CW Richmond, L.P. (Petitioner) filed a petition for creation of Fort Bend County Municipal Utility District No. 187 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land, consisting of one tract, to be included in the proposed District; (2) there is one lien holder, Amegy Bank National Association, on the property to be included in the proposed District; (3) the proposed District will contain approximately 519.56 acres located in Fort Bend County, Texas; and (4) the land within the proposed District is within the extraterritorial jurisdiction of the City of Richmond, Texas (City). According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the projects; and from the information available at the time, the cost of the water, wastewater, and drainage project is estimated to be approximately $47,871,200; the cost of the road facilities project is estimated to be approximately $5,050,000; and the cost of the parks and recreational facilities is estimated to be approximately $7,070,000.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200800185
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 16, 2008

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 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. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 25, 2008**. Section 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas

78711-3087 and must be **received by 5:00 p.m. on February 25, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Chez-Salin Quality Cleaners, Inc. dba Rodeo Cleaners 1, dba Rodeo Cleaners 2, dba Rodeo Cleaners 3, and dba Lyric South Cleaners; DOCKET NUMBER: 2006-0708-DCL-E; TCEQ ID NUMBERS: RN104087390, RN104087473, RN104087416, and RN102150364; LOCATIONS: 5414 West Military Drive, 633 South WW White Road, 4707 Pecan Valley Drive, and 2606 Pleasanton Road, San Antonio, Bexar County, Texas; TYPE OF FACILITIES: dry cleaning facility and dry cleaning drop stations; RULES VIOLATED: 30 TAC §337.11(e) and Texas Health and Safety Code (THSC), §374.102(a), by failing to complete and submit the required registration forms to TCEQ for a dry cleaning facility and three drop stations; PENALTY: $4,740; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: City of Kenedy; DOCKET NUMBER: 2007-0154-MWD-E; TCEQ ID NUMBER: RN102097839; LOCATION: approximately 1/2 mile east of Highway 72 and Farm-to-Market (FM) Road 792, Kenedy, Karnes County, Texas; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), Texas Water Code (TWC), §26.121(a), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010746001, Effluent Limitations, by failing to comply with the permitted effluent limits for Biological Oxygen Demand, Total Suspended Solids, and Daily Average Flow at Outfall 001A for the monitoring periods ending June 30, 2006, July 31, 2006, and August 31, 2006; and 30 TAC §305.125(17), TWC, §26.121(a), and TPDES Permit Number WQ0010746001, Sludge Provisions, by failing to submit discharge monitoring reports at the intervals specified in the permit; PENALTY: $29,400; Supplemental Environmental Project (SEP) offset amount of $29,400 applied to Karnes County; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: City of La Coste; DOCKET NUMBER: 2005-0264-MWD-E; TCEQ ID NUMBER: RN101916617; LOCATION: 11311 Lytle La Coste Road, La Coste, Medina County, Texas; TYPE OF FACILITY: municipal wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number 10889-001, Effluent Limitations and Monitoring Requirement 1, by failing to comply with the permitted effluent limit for ammonia nitrogen at Outfall 001; 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number 10889-001, Effluent Limitations and Monitoring Requirement 6, by failing to comply with the permitted effluent limit for dissolved oxygen at Outfall 001; and TWC, §26.121(c), by causing, suffering, allowing, and permitting the discharge of waste without commission authorization; PENALTY: $8,120; SEP offset amount of $8,120 applied to Texas State University River Systems Institute Continuous Water Quality Monitoring Network; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: Cruz Mendez dba New Way; DOCKET NUMBER: 2004-0716-PST-E; TCEQ ID NUMBERS: 18552 and RN102345097; LOCATION: 4306 West Marshall Avenue, Longview, Gregg County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(a)(1)(A) and TWC, §26.3475(a) and §26.3475(c)(1), by failing to have a release detection method capable of detecting a release from any portion of the underground storage tank (UST) system which contains regulated substances including tanks, piping, and other ancillary equipment; 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to have overfill prevention equipment for five USTs; 30 TAC §334.49(c)(2)(C) and (c)(4), by failing to check the impressed current corrosion protection system once every 60 days; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs at a retail service station; PENALTY: $16,500; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: HAB, Inc. dba New Village Cleaners aka New Village Cleaner aka Village Cleaners; DOCKET NUMBER: 2006-1380-DCL-E; TCEQ ID NUMBER: RN104028626; LOCATION: 14646 FM Road 529, Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: $1,185; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(6) COMPANY: The City of San Angelo; DOCKET NUMBER: 2006-0656-MSW-E; TCEQ ID NUMBER: RN102289576; LOCATION: 3002 Old Ballinger Highway, San Angelo, Tom Green County, Texas; TYPE OF FACILITY: municipal solid waste (MSW) landfill; RULES VIOLATED: 30 TAC §330.121(a) and MSW Permit Number 79, Section 12B, by failing to follow the Groundwater Sampling and Analysis Plan; PENALTY: $1,380; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

TRD-200800163
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 15, 2008

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 25, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or

considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 25, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Canyon Vista Custom Homes, LLC; DOCKET NUMBER: 2007-0600-WQ-E; TCEQ ID NUMBER: RN105008510; LOCATION: approximately 0.75 mile east of the intersection of Highway 71 and Farm-to-Market (FM) Road 2244, off of FM Road 2244, Travis County, Texas; TYPE OF FACILITY: construction business; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(a)(1), by failing to obtain authorization under the Texas Pollutant Discharge Elimination System (TPDES) Construction General Permit to discharge storm water associated with construction activities to waters of the State; PENALTY: $1,050; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(2) COMPANY: Daryl Major; DOCKET NUMBER: 2007-1041-MLM-E; TCEQ ID NUMBER: RN105212153; LOCATION: 1594 FM Road 1795, Willis, San Jacinto County, Texas; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; and 30 TAC §111.201 and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the general prohibition on outdoor burning; PENALTY: $8,500; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: David Gayle Lovett; DOCKET NUMBER: 2007-0592-LII-E; TCEQ ID NUMBER: RN103386561; LOCATION: 3604 Randall Street, Amarillo, Randall County, Texas; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §344.70 and Texas Water Code (TWC), §37.013, by failing to comply with local requirements, ordinances, and regulations designed to protect the public water supply (PWS); and 30 TAC §344.94(a) and (b), by failing to provide a written licensed irrigator's agreement to install an irrigation system that specifies the licensed irrigator's name, license number, business address and telephone number, date that the agreement was signed by each party, total agreed price, the design number or copy of the design, and the statement Irrigation in Texas is regulated by the Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087; PENALTY: $1,575; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(4) COMPANY: Juan Rodriguez dba JJ's Cleaners; DOCKET NUMBER: 2006-1051-DCL-E; TCEQ ID NUMBER: RN103957320; LOCATION: 4422 South Marsalis Avenue, Dallas, Dallas County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULES VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: $140; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Michael Soza dba Water Valley Water Co-op; DOCKET NUMBER: 2007-1133-PWS-E; TCEQ ID NUMBER: RN101451110; LOCATION: south of State Highway 71, one mile east of Wolf Lane, east of Garfield, near the city of Cedar Creek, Travis County, Texas; TYPE OF FACILITY: PWS system; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis and by failing to provide public notice of the failure to sample, during the months of January 2005, April 2005, February 2006, October 2006, January 2007, and March 2007; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(A), by failing to collect at least five routine water samples during the month following a total coliform-positive sample result and by failing to provide public notice of the failure to collect the appropriate number of samples in May 2004 and December 2006; 30 TAC §290.41(c)(1)(F), by failing to secure a sanitary control easement covering all property within 150 feet of the water system's two active wells; 30 TAC §290.45(b)(1)(A)(ii) and THSC, §341.0315(c), by failing to provide a minimum pressure tank capacity of 50 gallons per connection; 30 TAC §290.46(d)(2)(A), by failing to operate the disinfection equipment to maintain a free chlorine residual of 0.2 milligrams per liter (mg/L) throughout the distribution system at all times; 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling cock on the discharge pipe of well pump Number 1; 30 TAC §290.46(t), by failing to post a legible sign that contains the name of the water supply and emergency telephone numbers where a responsible official can be contacted; 30 TAC §290.39(j), by failing to notify the executive director prior to making any significant change or addition to the system's pressure maintenance facilities; 30 TAC §290.41(c)(3)(K), by failing to provide a casing vent for well Number 1; 30 TAC §290.41(c)(3)(N), by failing to provide flow measuring devices for well Numbers 1 and 2; 30 TAC §290.42(1), by failing to provide a facility operations manual for operator review and reference; 30 TAC §290.42(e)(3), by failing to have disinfection equipment installed so that continuous and effective disinfection of the water supply can be secured under all conditions; 30 TAC §290.42(e)(5), by failing to completely cover the hypochlorination solution container top to prevent the entrance of dust, insects, and other contaminants; 30 TAC §290.46(e)(4)(A) and THSC, §341.033(a), by failing to operate the system under the direct supervision of a water works operator who holds a Class D or higher license; 30 TAC §290.46(f), by failing to develop and maintain records of water works operation and maintenance activities; 30 TAC §290.46(j), by failing to complete and maintain customer service inspection certificates prior to providing continuous water service to new construction on any existing service when the water purveyor has reason to believe that cross connections and other potential contaminant hazards may exist, or after any material improvement, correction, or addition to the private water distribution facilities; 30 TAC §290.46(m), by failing to initiate maintenance housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.110(d)(3), by failing to obtain or utilize a test kit to measure the free chlorine residual to a minimum accuracy of plus or minus 0.1 mg/L; 30 TAC §290.121(a), by failing to develop and maintain an

up-to-date chemical and microbiological monitoring plan for the water system; and 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay all annual and late Public Health Services fees for TCEQ Financial Administration Account Number 92270030 for Fiscal Years of 2002 - 2007; PENALTY: $11,890; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(6) COMPANY: Mohamed Ahmed Al Bataineh dba Harvest Food Store; DOCKET NUMBER: 2005-1241-PST-E; TCEQ ID NUMBER: RN100925064; LOCATION: 4626 Yale Street, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST Registration late fees for TCEQ Financial Administration Account Number 0057887U; PENALTY: $1,050; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(7) COMPANY: Richard K. Song dba KS Cleaners; DOCKET NUMBER: 2007-0756-MLM-E; TCEQ ID NUMBER: RN103955639; LOCATION: 101 East Southwest Parkway, Suite 101, Lewisville, Denton County, Texas; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.11(e) and THSC, §374.102(e), by failing to obtain a current dry cleaning facility registration certificate; 30 TAC §337.20(e)(3)(A), by failing to install a dike or other secondary containment structure around each dry cleaning unit and around each storage area for dry cleaning solvents, dry cleaning waste, or dry cleaning containment; 30 TAC §337.20(e)(6), by failing to keep a weekly inspection log for each secondary containment structure; 30 TAC §335.4, by failing to prevent the unauthorized discharge of municipal hazardous waste; and 30 TAC §335.9(a)(1), by failing to provide documentation concerning the quantity of waste generated and quantity of waste shipped off-site for disposal each calendar year; PENALTY: $7,650; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: The City of Thornton; DOCKET NUMBER: 2006-0571-MWD-E; TCEQ ID NUMBER: RN102844461; LOCATION: approximately 0.5 mile south of the intersection of State Highway 14 and FM Road 1246, Thornton, Limestone County, Texas; TYPE OF FACILITY: municipal wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), (4), and (5) and §305.535(c)(1), TWC, §26.121(a), and TPDES Permit Number WQ0010824001, Condition Number 2.d., by failing to prevent or mitigate the unauthorized discharge of excess sludge into the receiving stream; 30 TAC §305.125(1), TWC, §26.121(a), and TPDES Permit Number WQ0010824001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6, by failing to comply with permitted effluent limits; and 30 TAC §305.102(1) and (17) and §319.7(d) and TPDES Permit Number WQ0010824001, Monitoring and Reporting Requirements Number 1, by failing to submit monitoring results at the intervals specified in the permit; PENALTY: $48,480; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200800164

Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 15, 2008

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Notice of Priority Groundwater Management Area Report Completion and Availability

The executive director of the Texas Commission on Environmental Quality (TCEQ or commission) in accordance with 30 TAC §294.41(i), gives notice of the completion, recommended action, and availability of the priority groundwater management area (PGMA) report entitled *Updated Evaluation for the Central Texas - Trinity Aquifer - Priority Groundwater Management Study Area*. In the report, the executive director recommends that the commission should designate a five-county area as a PGMA and recommends that a regional, combination fee, and ad valorem tax funded groundwater conservation districts (GCDs) represents the most feasible, economic, and practicable option for protection and management of the groundwater resources. The report was filed with the Office of the Chief Clerk of the TCEQ on January 9, 2008. The matter will be referred to the State Office of Administrative Hearings for a public hearing to be scheduled at a later date. Notice of the hearing will be provided in accordance with 30 TAC §294.42.

EXECUTIVE SUMMARY OF REPORT

This report presents the updated PGMA study for the Central Texas - Trinity Aquifer - area, including Bell, Bosque, Brown, Callahan, Comanche, Coryell, Eastland, Erath, Falls, Hamilton, Hill, Lampasas, Limestone, McLennan, Mills, and Somervell counties. The purpose of the study is to determine if all, part, or any of this area is experiencing or is expected to experience within the next 25-year period critical groundwater problems and to recommend physically and economically feasible groundwater management solutions if shortages of surface water or groundwater are occurring or are expected to occur.

A 1990 study by the Texas Water Commission (TWC), a TCEQ predecessor agency, and the Texas Water Development Board (TWDB) determined that Central Texas Study Area did not meet the criteria to be designated as a "critical area" primarily because of the availability of surface water supplies to meet projected needs. However, the TWC recommended that progress toward the conversion from groundwater to surface water usage should be reinvestigated; and if conversion plans were not being implemented or if GCDs were not being formed, designation consideration for the area may need to be reconsidered. At that time, three GCDs existed within the study area, Clearwater Underground Water Conservation District (UWCD) (Bell County), Fox Crossing WD (Mills County), and Saratoga UWCD (Lampasas County). The Middle Trinity GCD was created in Comanche and Erath counties in 2001.

TCEQ efforts to reevaluate the study area were started again in 1998, and TWDB and Texas Parks and Wildlife Department (TPWD) reports were completed in 1999. Shortly thereafter, the TCEQ chose to postpone the update effort until the 2001 Regional Water Plans and the 2002 State Water Plan were completed. State law was subsequently amended in 2001 to require TCEQ to complete this and several other similar update PGMA studies.

This study evaluates regional water resource issues and summarizes and evaluates data and information that has been developed in the Central Texas study area over the past 15 years. This report relies primarily on the data and supporting information for the 2001 and the 2006 Brazos G, Region F, and Lower Colorado Regional Water Plans and the 2002 State Water Plan. The report also evaluates and uses information provided by stakeholders, other TWDB publications and data, data

from the groundwater availability modeling for the Trinity/Woodbine Aquifers, and natural resources issues identified by the Texas Parks and Wildlife Department. The report evaluates the authority and management practices of existing water management entities and purveyors within and adjacent to the study area and makes recommendations on appropriate strategies needed to conserve and protect groundwater resources in the study area.

On October 18, 2004, TCEQ mailed a notice to approximately 532 water stakeholders within the study area to solicit comments and information about water supplies and groundwater availability, water level trends, quality, and management.

From 2000 to 2030, the population of the 16-county Central Texas study area is projected to increase from just over 771,000 to just over 1.02 million residents. Likewise, the projected demand for water will increase from over 337,000 acre-feet (acft) in 2000 to a projected demand of over 416.9 thousand acft by 2030. Municipal use presently accounts for about 43% of the total water use and is projected to account for 45.6% by the year 2030.

The Trinity Aquifer is the primary groundwater resource in the study area, providing 52.9% of the groundwater, while the Brazos River Alluvium and the Woodbine Aquifers provide significant (26.2%) amounts of water in the eastern part of the study area. The Carrizo-Wilcox Aquifer provides 15.6% of the groundwater in the area, but only in Falls and Limestone counties. Other aquifers supplying the area are the Edwards-Balcones Fault Zone (BFZ, Northern Segment), Ellenburger-San Saba, and Marble Falls. Together, these aquifers supply about 5% of the total water supply in the study area. Groundwater-level declines including the associated reduction of artesian pressure caused by the continued removal of water from aquifer storage is a regional problem. This problem was identified in 1975 and remains a significant groundwater problem today.

Regional water plan strategies to increase reliance on the Trinity Aquifer have been adopted for many water user groups in the study area. Adding new wells or increasing existing well production are regional water plan strategies for six water user groups in Coryell, Eastland, Erath, Lampasas, and Mills counties.

The 2006 Brazos G Water Plans note that groundwater for mining in the study-area counties of Bosque, Comanche, Erath, Hamilton, Hill, and Somervell is derived from the Trinity, Woodbine, and Brazos River Alluvium Aquifers. The mining user group data in the regional water plans estimate the presently available water supply in these six counties for mining use is about 562 acft/year (yr). Harden and Associates (2007) estimated a typical vertical well completion consumes approximately 1.2 million gallons (3.68 acft), and a typical horizontal completion 3.0 - 3.5 million gallons of fresh water (9.21 - 10.74 acft) per well. Using this estimate, the current number of drilling applications in the six-county area would potentially represent about 2,148 acft of water use for this specific mining purpose. At present, the number of active drilling rigs appears to be the only limiting factor to the number of Barnett Shale gas wells that can be drilled each year.

More groundwater is being withdrawn than recharged to aquifers in most parts of the Central Texas study area. The continuing overdevelopment of the Trinity Aquifer threatens water supplies for rural, domestic, municipal, and small water providers who depend on groundwater resources. The water demands from the continued urbanization of the area and, more recently, the growing natural gas exploration activity are not expected to level out or to lessen over the next 25-year period.

Some groundwater users on the fringes of the Interstate 35 corridor, including many municipalities, will be converting to surface water sources over the next 10 to 20 years. However, increased groundwater pumpage to keep pace with the growth away from the corridor and the growing suburban cities is anticipated to continue. Historically, regional groundwater pumpage has not lessened when providers convert to surface water sources because those who develop next, just outside of the area that has recently converted to surface water, will look primarily to use the groundwater resources.

Preserving the ability to rely on the limited groundwater resource is and will remain a primary objective for remote rural water suppliers; individual businesses, industries, or homeowners; and, small municipalities. Protecting existing groundwater supplies is a critical issue for these groundwater users because the delivery of alternative surface water supplies is not projected to be economically feasible. For these reasons, it is recommended that the following counties be designated as the Central Texas (Trinity Aquifer) PGMA: Bosque, Coryell, Hill, McLennan, and Somervell. Critical groundwater problems are not presently occurring or projected to occur in Bell, Brown, Callahan, Comanche, Eastland, Erath, Falls, Hamilton, Lampasas, Limestone, or Mills counties within the next 25-year period; and these counties should not be designated as part of the recommended Central Texas (Trinity Aquifer) PGMA.

The Brazos G regional water plan reports that Eastland County had a total water shortage of 9,140 acft in 2000 for the irrigation water user group. The report also projects an annual shortage of about 9,200 acft/yr through 2030 when the shortage is projected to be 9,224 acft. Strategies to meet these needs are conservation, weather modification, and brush control. There do not appear to be any long-term water level declines in the Trinity Aquifer in Eastland County, which indicates that there has been no significant mining of the aquifer. Therefore, Eastland County is not being designated as part of the recommended Central Texas (Trinity Aquifer) PGMA.

One or more GCDs created within Bosque, Coryell, Hill, McLennan, and Somervell counties would have the necessary authority to address the groundwater problems identified in the area. Financing groundwater management activities through a combination of well production fees and ad valorem taxes is concluded to be the most viable alternative. A regional GCD for these counties would include the greatest areal extent of the Trinity Aquifer experiencing supply problems and would be the most cost effective. From a resource protection perspective, this option would be the most efficient by allowing for a single groundwater management program that would assure consistency across the area, providing a central groundwater management entity for decision-making purposes and simplifying groundwater management planning responsibilities related to Groundwater Management Area #8.

The remote rural water suppliers; individual businesses, industries, or homeowners; and, small municipalities of these counties would benefit from groundwater management programs for the Trinity, Brazos River Alluvium, and Woodbine Aquifers. GCD programs with the following goals would benefit groundwater users in the area: manage groundwater withdrawals; quantify groundwater availability and quality; identify groundwater problems that should be addressed through aquifer and area-specific research, monitoring, data collection, assessment, and education programs; quantify aquifer impacts from pumpage; establish a comprehensive water well inventory, registration, and permitting program; and evaluate and understand aquifer characteristics sufficiently to establish spacing regulations to minimize drawdown of water levels and to prevent interference among neighboring wells.

It is recommended that a regional, combination fee, and ad valorem tax funded GCD for the preservation of the Trinity, the Brazos River Alluvium, and the Woodbine Aquifers in Bosque, Coryell, Hill, McLennan, and Somervell counties represents the most feasible, economic, and practicable option for protection and management of groundwater resources.

Alternatively, it is recommended that two multi-county GCDs could be created based on local actions taken independently to create, subject to a confirmation election, the Tablerock GCD, Coryell County and the McLennan County GCD. Each newly created district must add at least one adjacent county to their district before September 1, 2011.

It is also suggested that the landowners in Eastland County living and relying heavily on the Trinity Aquifer would find it beneficial to join the existing Middle Trinity GCD.

The use and application of the permissive authority granted to municipal and county platting authorities to require groundwater availability certification under the Local Government Code can be an effective tool to help ensure that residents of new subdivisions with homes that will rely on individual wells will have adequate groundwater resources. It is recommended that local governments consider using this groundwater management tool to address water supply concerns in rapidly developing areas.

REPORT AVAILABILITY

The executive director's report was filed on January 9, 2008, with TCEQ's Office of the Chief Clerk, located at 12100 Park 35 Circle, Building F, Room 1104, Austin, Texas. The report is available for public inspection at the following county clerk office locations: 104 West Morgan St., Meridian; 620 E. Main, Gatesville; County Courthouse, Hillsboro; 215 N. 5th St., Rm. 223, Waco; and County Courthouse, Glen Rose. The report is also available for inspection at the following libraries and locations: Tarleton State University, Dick Smith Library, Special Services, 201 Saint Felix, Stephenville; Baylor University, Texas Collection, 1429 S. Fifth St. Waco; Temple Public Library, 100 W Adams Ave, Temple; Meridian Public Library, 105 N Erath, Meridian; Brownwood Public Library, 600 Carnegie Blvd., Brownwood; Callahan County Library, 100 West 4th B1, Baird; Comanche Public Library, 311 N. Austin Street, Comanche; Gatesville Public Library, 111 N. 8th Street, Gatesville; Ranger Public Library, 718 Pine Street, Ranger; The City Of Stephenville Library, 174 North Columbia Street, Stephenville; Marlin Public Library, 301 Winter St., Marlin; Hamilton Public Library, 201 North Pecan, Hamilton; Hillsboro City Library, 118 South Waco Street, Hillsboro; Lampasas Public Library, 201 S. Main Street, Lampasas; Moffat Memorial Library, 601 W Yeagua St., Groesbeck; Jennie Trent Dew Library, 1101 Hutchings St., Goldthwaite; Waco-McLennan County Library, P.O. Box 2570, Waco; Somervell County Library, 108 Allen Dr., Glen Rose; Legislative Reference Library, Texas State Capitol Building, 1100 Congress Ave., Rm 2N.3, Austin; Texas State Library, 1201 Brazos, Austin; Brazos Valley GCD, 112 W. 3rd Street, Hearne; Central Texas GCD, 225 S. Pierce, Burnet; Clearwater UWCD, 2180 North Main, Belton; Fox Crossing Water District, 1011 4th St., Goldthwaite; McLennan County GCD, 4900 Sanger Ave., Waco; Middle Trinity GCD, 150 N. Harbin St., Ste. 434, Stephenville; Post Oak Savannah GCD, 310 E Ave. C, Milano; Saratoga UWCD, 501 E. 4th Street, Lampasas; Tablerock GCD, 620 East Main St., Gatesville; Region F Water Planning Group - Freese and Nichols, Inc., 10814 Jollyville Road, Building 4, Suite 100, Austin; Brazos G Water Planning Group - Brazos River Authority, 4600 Cobbs Dr., Waco; Lower Colorado Regional Water Planning Group - Turner Collie & Braden, 400 W. 15th Street Suite 500, Austin; TCEQ Region 3 Office, 1977 Industrial Blvd., Abilene; TCEQ Region 4 Office, 2309 Gravel Dr., Fort Worth; TCEQ Region 9 Office, 6801 Sanger Ave Ste 2500, Waco; and on the commission's Web site at *http://www.tceq.state.tx.us/permitting/water_supply/groundwater/pgma.html*. Copies of the report may be obtained by contacting Mr. Leon Byrd at (512) 239-0540, by email at *cbyrd@tceq.state.tx.us*, or in writing to Mr. Leon Byrd, Texas Commission on Environmental Quality, Groundwater Planning and Assessment, MC 147, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200800170
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 15, 2008

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Notice of Water Quality Applications

The following notices were issued during the period of January 9, 2008 through January 14, 2008.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

ALDINE INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0013609001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 42,000 gallons per day. The facility is located approximately 700 feet southeast of the intersection of Frick Road and Ann Louise Road, approximately 1,200 feet southeast of Halls Bayou, and approximately 6,500 feet southwest of Beltway 8 and Veterans Memorial Drive in Harris County, Texas.

BARI INVESTMENTS, LLLP has applied for a new permit, proposed TPDES Permit No. WQ0014835001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,200,000 gallons per day. The facility will be located south of the City of Gunter, approximately 1 1/2 miles west of the intersection of Highway 289 and Marilee Road, and approximately 3/4 mile north of Marilee Road in Grayson County, Texas.

CHAMP'S WATER COMPANY has applied for a renewal of TPDES Permit No. WQ0012730001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,400 gallons per day. The facility is located at 10717 Country Meadow Lane, approximately 150 feet west of the intersection of Country Meadow Lane and Huffsmith-Kohrville and 2.3 miles south-southeast of the City of Tomball in Northwest Harris County, Texas.

Consideration of the application by DENNIS JAMES SCHOUTEN, CORNELIUS THOMAS SCHOUTEN, AND NICHOLAS SCHOUTEN for a major amendment of Permit No. WQ0004133000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to expand an existing Dairy facility from 650 head to a maximum capacity of 999 head, of which 999 head are milking cows. The facility is located on the west side of State Highway 108, approximately 1.25 miles south of the intersection of State Highway 108 and Farm-to-Market Road 219 in Erath County, Texas

CITY OF DENTON has applied for a major amendment to TPDES Permit No. WQ0010027004 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 250,000 gallons per day to an annual average flow not to exceed 1,600,000 gallons per day. The facility is located 14,800 feet southeast of the intersection of Highway 2449 and Highway 156 at Ponder and 14,600 feet northeast of the intersection of Highway 1384 and Highway 156 in Denton County, Texas.

FAIRBANKS PLAZA SHOPPING CENTER, L.P. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014827001, to authorize the discharge of

treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. This facility was previously permitted under TPDES Permit No. WQ0012139001, which expired March 01, 2007. The facility is located approximately 600 feet southwest of the intersection of U.S. Highway 290 and Fairbanks-North Houston Road in Harris County, Texas.

THE FORT WORTH BOAT CLUB has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014840001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 15,800 gallons per day. This facility was previously authorized under permit No. WQ0011123001 which was allowed to expire December 1, 2006. The facility is located approximately two miles west of Farm-to-Market Road 1220 on Boat Club Road and on the east side of Eagle Mountain Reservoir in Tarrant County, Texas.

HARRIS COUNTY FRESH WATER SUPPLY DISTRICT NO. 61 has applied for a renewal of TPDES Permit No. WQ0010876001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,600,000 gallons per day. The facility is located approximately 3,500 feet south of Cypress-North Houston Road and 3,000 feet east of Huffmeister Road in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 26 has applied for a renewal of TPDES Permit No. WQ0011406001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located approximately 3,500 feet east of the confluence of Spring Creek and Cypress Creek, and 9,400 feet north of Farm-to-Market Road 1960 in Harris County, Texas.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 110 has applied for a renewal of TPDES Permit No. WQ0011964001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,000,000 gallons per day. The facility is located at 627 Cypress Oaks Drive, Spring, Texas, 1,200 feet north of Cypress Creek and approximately 1,400 feet west of Interstate Highway 45 and U.S. Highway 75 in Harris County, Texas.

IS ZEN CENTER has applied for a renewal of TPDES Permit No. WQ0014491001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The facility is located at 9550 Carraway Lane, 850 feet northeast of the northeast corner of the intersection of Dobbin-Hufsmith Road and Carraway Lane in Montgomery County, Texas.

JEREMIAH VENTURE, LP has applied for a new permit, Proposed Permit No. WQ0014785001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 330,000 gallons per day via surface irrigation of 122.37 acres of public access land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located at 6327 Farm-to-Market Road 967, Buda, in Hays County, Texas.

JIMMIE WAYNE MASSEY has applied to the TCEQ for a renewal of TPDES Permit No. WQ0011768001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The existing wastewater treatment facility receives wastewater from a liquid waste dewatering facility (dewatering unit for domestic sewage, domestic septage and grease trap wastes from other facilities), a chemical toilet pretreatment unit, and domestic wastewater from a washateria and an office building. The liquid wastes from the liquid waste dewatering facility and pretreatment unit are routed to the headworks of the wastewater treatment facility and commingled with the domestic wastewater for treatment under this permit. The applicant is requesting changes to the existing permit to include authorization for the liquid waste dewatering facility in the domestic wastewater permit instead of obtaining authorization via a Municipal Solid Waste (MSW) Type V Grease and Grit Trap Waste authorization. The facility is located approximately 3/4 mile southeast of the intersection of Farm-to-Market Road 2540 and State Highway 35 in Matagorda County, Texas.

KINGS MANOR MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ13526001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located at 27000 Greenberry Drive, 0.6 mile northeast of the intersection of State Highway Loop 494 and Kingwood Drive in Harris County, Texas.

LAND TEJAS PARK LAKES 1023, L.P. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014812001 to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,000,000 gallons per day. The facility will be located on the east bank of Williams Gully, about 6,000 feet north of the intersection of Beltway 8 and Lockwood Road in Harris County, Texas.

CITY OF MCALLEN has applied for a major amendment to TPDES Permit No. WQ0010633004 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 8,000,000 gallons per day to an annual average flow not to exceed 18,000,000 gallons per day. The facility is located on Sprague Road approximately 1.5 miles southwest of the intersection of Farm-to-Market Road 2061 and State Highway 107 in Hidalgo County, Texas.

MONARCH UTILITIES I L.P. has applied for a renewal of TPDES Permit No. WQ0012587001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 460,000 gallons per day. The facility is located approximately 1.3 miles west of the intersection of Huffsmith-Dobbin Road and Hardin-Store Road in Montgomery County, Texas.

NORTHLAND JOINT VENTURE has applied for a renewal of TPDES Permit No. WQ0011572001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located approximately 700 feet east of Interstate Highway 45, adjacent to Northland Shopping Center and approximately 1000 feet south-southeast of the intersection of Interstate Highway 45 and Spring Cypress Road (Farm-to-Market Road 2920) in Harris County, Texas.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 9 has applied for a renewal of TPDES Permit No. WQ0014030001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located at 11023 Regency Green Drive, approximately 1/4 mile west of Jones Road and 1/3 mile south of Grant Road in Harris County, Texas.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 20 has applied for a renewal of TPDES Permit No. WQ0013625001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,700,000 gallons per day. The facility is located approximately 6,500 feet north and 8,700 feet east of the intersection of Farm-to-Market Road 1960 and Stuebner Airline Road, approximately 2 1/4 miles northeast of the same intersection in Harris County, Texas.

CITY OF PASADENA has applied for a renewal of TPDES Permit No. WQ0010053009, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 14,000,000 gallons per day. The facility is located at 209 North Main Street, on the north

side of Little Vince Bayou in the City of Pasadena in Harris County, Texas.

RAYFORD ROAD MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0012030001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,300,000 gallons per day. The facility is located north of Rayford Road, approximately 2.1 miles east of the intersection of Rayford Road and Interstate Highway 45 in Montgomery County, Texas.

SIENNA PLANTATION MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a major amendment to TPDES Permit No. WQ0014612001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 600,000 gallons per day to an annual average flow not to exceed 3,500,000 gallons per day. The facility is located approximately 500 feet south of Sienna Parkway, 465 feet east of Channel 2 and west of the pipeline easement in Fort Bend County, Texas.

SKINNER LANDS TURKEY CREEK, LLC which operates the Skinner Lands Turkey Creek facility, a 120-acre woody ornamental plant nursery, has applied for a renewal of TPDES Permit No. WQ0003076000, which authorizes the discharge of excess water from a recycle irrigation system on an intermittent and flow variable basis via Outfalls 001 and 002. The facility is located at the intersection of Broze Road and Farm-to-Market Road 1960, approximately 5.5 miles east of Interstate Highway 45, Harris County, Texas.

SPRING CREEK UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011574001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 930,000 gallons per day. The facility is located at 2300 Leichester Drive, approximately one mile west of the intersection of Riley Fuzzel Road and Rayford Road in Spring, Montgomery County, Texas.

TIMBERLAKE IMPROVEMENT DISTRICT has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0011267001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 400,000 gallons per day to a daily average flow not to exceed 500,000 gallons per day. The facility is located at 12702 Jarvis Drive, Cypress, Texas, south of Cypress Creek, approximately 3.2 miles north of the intersection of U.S. Highway 290 and Farm-to-Market Road 1960 and approximately 1.4 miles north of the intersection of Cypress-North Houston Road and Huffmeister Road in Harris County, Texas.

TRESCHWIG JOINT POWERS BOARD has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0011141001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located at 4414 Treschwig Road, Spring, Texas, on the north bank of Cypress Creek approximately one mile north of Farm-to-Market Road 1960 and 2.5 miles east of the Missouri Pacific Railroad in Harris County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200800183
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 16, 2008

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Notice of Water Rights Application

Notice issued January 14, 2008.

APPLICATION NO. 12247; Kinder Morgan Tejas Pipeline, L.P., Applicant, 500 Dallas Street, Suite 1000, Houston, Texas 77002, has applied for a Temporary Water Use Permit to divert and use not to exceed 24 acre-feet of water from Kickapoo Creek, Trinity River Basin, within a period of one year for industrial purposes in Polk County. More information on the application and how to participate in the permitting process is given below. The application and fees were received on September 6, 2007, and additional information and fees were received on November 7, 2007. The application was declared administratively complete and filed with the Office of the Chief Clerk on November 16, 2007. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by February 4, 2008.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "I/we request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Texas Commission on Environmental Quality (TCEQ) Office of the Chief Clerk at the address provided below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200800184
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 16, 2008

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Request for Nominations for Appointment to Serve on the Irrigator Advisory Council

The Texas Commission on Environmental Quality (TCEQ) is requesting nominations for three individuals to serve on the Irrigator Advisory Council (council). Two of the individuals must be an irrigator licensed to work in Texas and the third individual represents the public. Council members will be asked to serve a six-year term beginning in 2009.

The Texas Occupations Code, Title 12, Chapter 1903, Subchapter D (see 30 TAC §344.10) provides the structure of the nine-member council appointed by the TCEQ. The council is comprised of nine members appointed by the TCEQ: six licensed irrigators who are residents of Texas, experienced in the irrigation business, and familiar with irrigation methods and techniques; and three public members.

The council provides valuable feedback and suggestions to improve landscape irrigation in Texas. The council members are required to attend half of the annual meetings. The council members generally meet for one day in Austin in March, July, and November of each year. Council members are not paid for their services but are eligible for reimbursement of travel expenses at state rates as appropriated by the legislature.

To nominate an individual: 1) ensure the individual is qualified for the position for which he/she is being considered; 2) submit a brief biographical summary which includes work experience; and 3) provide the nominee a copy of this request. The nominee must submit a letter indicating his/her agreement to serve, if appointed.

Written nominations and letters from nominees must be received by **5:00 p.m. on May 31, 2008.** The appointment will be considered by the TCEQ at a future agenda. Please mail all correspondence to Candice Garrett, Texas Commission on Environmental Quality, Compliance Support Division, MC 178, P.O. Box 13087, Austin, Texas 78711-3087 or fax to (512) 239-6390. Questions regarding the council can be directed to Ms. Garrett at (512) 239-1451, or e-mail: cgarrett@tceq.state.tx.us. Additional information regarding the council is available on the web site: *http://www.tceq.state.tx.us/compliance/compliance_support/regulatory/irrigation/irr_advisory.html.*

TRD-200800132
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 11, 2008

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Texas Facilities Commission

Request for Proposals

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice, announces the issuance of Request for Proposals (RFP) #303-8-10589A. TFC seeks a five or a ten year lease of approximately 7,871 square feet of office space in Pasadena, Harris County, Texas.

The deadline for questions is February 1, 2008 and the deadline for proposals is February 13, 2008 at 3:00 p.m. The award date is March 21, 2008. 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 a 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 TFC Purchaser Myra Beer at (512) 463-5773. 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=74674*.

TRD-200800180
Kay Molina
General Counsel
Texas Facilities Commission
Filed: January 16, 2008

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Request for Proposals

The Texas Facilities Commission (TFC), on behalf of the Department of Family and Protective Services (DFPS), announces the issuance of Request for Proposals (RFP) # 303-8-10891. TFC seeks a 5 or 10 year lease of approximately 10,859 square feet of office space in Houston, Harris, Texas.

The deadline for questions is February 8, 2008 and the deadline for proposals is February 22, 2008 at 3:00 p.m. The award date is March 21, 2008. 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 a 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 TFC Purchaser Myra Beer at (512) 463-5773. 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=74702*.

TRD-200800190
Kay Molina
General Counsel
Texas Facilities Commission
Filed: January 16, 2008

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Texas Health and Human Services Commission

Notice of Hearing on Proposed Provider Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 11, 2008, at 9:00 a.m., to receive public comment on proposed payment rates for the Residential Care (RC) program, assisted living/residential care services under the Community Based Alternatives (CBA AL/RC) program, assisted living/residential care services under the Consolidated Waiver (CW) program and Community Based Alternatives Personal Care III services (PCIII). The Department of Aging and Disability Services (DADS) operates these programs. The payment rates are proposed to be effective March 1, 2008.

The public hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 of the Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed reimbursement rates. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring American with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes to decrease the facility cost area rates for the RC, CBA AL/RC, CW and PCIII programs to reflect the most recent increase in Federal Supplemental Security Income (SSI) pay-

ments in accordance with the rate setting methodologies listed below under Methodology and Justification. The methodologies require that when SSI is increased, the per diem reimbursement be decreased by an amount equal to that increase.

Methodology and justification. The proposed rates were determined in accordance with the rate reimbursement setting methodology at 1 TAC §355.509(c)(2) for the RC program, 1 TAC §355.503(d)(2)(B) for the CBA AL/RC program, and 1 TAC §355.506(a) for the CW program.

Briefing package. A briefing package describing the proposed reimbursement rates will be available on January 28, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written and oral comments. Written comments regarding the 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 attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200800158
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: January 15, 2008

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Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) published a public notice regarding the proposed Medicaid payment rates for bariatric surgery procedure codes in the January 11, 2008, issue of the *Texas Register* (33 TexReg 439). The notice listed incorrect rates. The correct notice should be as follows:

The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on January 30, 2008, at 1:30 p.m. to receive public comment on the proposed Medicaid payment rates for bariatric surgery procedure codes listed below. These changes are associated with Medicaid medical policy changes. The public hearing will be held in the Lone Star Conference Room of the HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. The proposed payment rates will be effective March 1, 2008. The proposed rates are as follows:

Type of Service (TOS)*	Procedure Code**	Proposed Relative Value Units (RVUs)	Proposed Medicaid Rate
2	43644	42.50	$1,217.20
8	43644	6.80	$194.75
F	43644		ASC Group 6
2	43645	45.39	$1,299.97
8	43645	7.26	$207.93
F	43645		ASC Group 6
2	43770	27.44	$785.88
8	43770	4.39	$125.73
F	43770		ASC Group 6
2	43771	31.31	$896.72
8	43771	5.01	$143.49
F	43771		ASC Group 6
2	43772	23.54	$674.19
8	43772	3.77	$107.97
F	43772		ASC Group 6
2	43773	31.30	$896.43
8	43773	5.01	$143.49
F	43773		ASC Group 6
2	43774	23.69	$678.48
8	43774	3.79	$108.55
F	43774		ASC Group 6
2	43842	30.10	$862.06
8	43842	4.82	$138.04
F	43842		ASC Group 6
2	43843	31.38	$898.72
8	43843	5.02	$143.77
F	43843		ASC Group 6
2	43845	50.06	$1,433.72
8	43845	8.01	$229.41
F	43845		ASC Group 6
2	43846	40.39	$1,156.77
8	43846	6.46	$185.01
F	43846		ASC Group 6
2	43847	44.17	$1,265.03
8	43847	7.07	$202.48
F	43847		ASC Group 6
2	43848	47.74	$1,367.27
8	43848	7.64	$218.81
F	43848		ASC Group 6
2	43886	8.23	$235.71
8	43886	1.32	$37.80
F	43886		ASC Group 6
2	43887	7.80	$223.39
8	43887	1.25	$35.80
F	43887		ASC Group 6
2	43888	11.05	$316.47
8	43888	1.77	$50.69
F	43888		ASC Group 6
7	00797	8.00	$133.76

***Type of Service Code Key:**
2 = Surgery
F = Ambulatory Surgical Center (ASC)/Hospital-Based ASC
7 = Anesthesia
8 = Assistance Surgery

****Required Notice:** The five-character codes included in this notice are obtained from the Current Procedural Terminology (CPT®), copyright 2008 by the American Medical Association (AMA). CPT is developed by the AMA as a listing of descriptive terms and five character identifying codes and modifiers for reporting medical services and procedures performed by physicians. The responsibility for the content of this notice is with HHSC and no endorsement by the AMA is intended or should be implied. The AMA disclaims responsibility for any consequences or liability attributable or related to any use, nonuse or interpretation of information contained in this notice. Fee schedules, relative value units, conversion factors and/or related components are not assigned by the AMA, are not part of CPT, and the AMA is not recommending their use. The AMA does not directly or indirectly practice medicine or dispense medical services. The AMA assumes no liability for data contained or not contained herein. Any use of CPT outside of this notice should refer to the most recent Current Procedural Terminology, which contains the complete and most current listing of CPT codes and descriptive terms. Applicable FARS/DFARS apply. CPT is a registered trademark of the American Medical Association.

Methodology and Justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners, and 1 TAC §355.8121, which addresses the reimbursement methodology for ASCs/HASCs.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after January 14, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package 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 attention of Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200800153
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: January 14, 2008

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Texas Department of Housing and Community Affairs

Correction of Error

The Texas Department of Housing and Community Affairs adopted new §§53.80 - 53.86, concerning HOME Rules in the January 4, 2008, issue of the *Texas Register* (33 TexReg 95).

Due to a submittal error, the text in the first paragraph of the preamble is incorrect. The first paragraph stated that §53.80 was adopted without changes. Section 53.80 should have been adopted with changes, because it was changed from the proposal due to comments received. The first paragraph is corrected to read as follows:

The Texas Department of Housing and Community Affairs (the Department) adopts new Chapter 53, Subchapter G, §§53.80 - 53.86, concerning HOME Rules as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 6950). Sections 53.80, 53.81 and 53.85 are adopted with changes. Sections 53.82 - 53.84 and §53.86 are adopted without changes and will not be republished.

Please refer to the *Texas Administrative Code* 10 TAC §53.80 for the text of the rule.

TRD-200800133

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Texas Department of Insurance

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of MARRIOTT CLAIM SERVICES CORPORATION, a domestic third party administrator. The home office is DALLAS, TEXAS.

Application of STREAMLINE ADMINISTRATORS, LLC, a domestic third party administrator. The home office is ALLEN, TEXAS.

Application of THE FRANK GATES SERVICE COMPANY, a foreign third party administrator. The home office is DUBLIN, OHIO.

Application of SABINE-NECHES ADMINISTRATORS, LC (using the assumed name of GREENTREE ADMINISTRATORS), a domestic third party administrator. The home office is BEAUMONT, TEXAS.

Application of USI INSURANCE SERVICES LLC, a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Application of CHESTERFIELD SERVICES, INC., a foreign third party administrator. The home office is AKRON, OHIO.

Application of MONTLAKE HOLDINGS LLC, a foreign third party administrator. The home office is SEATTLE, WASHINGTON.

Application of NAVITUS HEALTH SOLUTIONS, LLC, a foreign third party administrator. The home office is APPLETON, WISCONSIN.

Application to change the name of VALIC RETIREMENT SERVICES COMPANY to AIG RETIREMENT SERVICES COMPANY, a domestic third party administrator. The home office is HOUSTON, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200800181
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: January 16, 2008

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Texas Department of Insurance, Division of Workers' Compensation

Correction of Error

The Texas Department of Insurance, Division of Workers' Compensation adopted amendments to 28 TAC §134.1 and new §§134.2, 134.203 and 134.204, concerning Medical Fee Guideline, in the January 11, 2008, issue of the *Texas Register* (33 TexReg 364). The following errors occurred in the rule adoption preamble:

Page 370, left column, fourth paragraph. The word "guidelines" should be "guideline".

The sentence should read as follows: "New §134.203 and §134.204 are based on and address the same subject matter as the current §134.202 medical fee guideline;..."

Page 382, left column, fourth line from the bottom. The word "achieve" should be "achieved".

The full sentence should read as follows: "All internal coherence between medical service categories in a medical fee guideline is achieved only if the guideline has a relative based RVU scale such as RBRVS which values every unique medical procedure or service."

Page 385, left column, second paragraph, first sentence. The word "commission" should be "Division".

The full sentence should read as follows: "Agency Response: The Division disagrees with the commenters' statement that Division rules and regulations tie up the healthcare providers' time, and that the energy and commitment to care for a workers' compensation patient is approximately 250 percent of the overhead as compared to Medicare."

Page 387, left column, fifth paragraph, third line. The reference to "HCPCPS" should be "HCPCS".

The sentence should read as follows: "Comment: Commenters recommend rules be further modified, with suggested draft language, to make the MEI applicable to fees for the services and/or supplies rendered via HCPCS Level II codes and pathology and laboratory services not addressed in the CPT Code service categories, as well as all services identified in §134.204."

TRD-200800189

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Notice of Public Hearing

The Texas Department of Insurance, Division of Workers' Compensation (TDI) will hold a public hearing on Monday, February 4, 2008 in the Tippy Foster Room at the Metro Center Location, 7551 Metro Center Drive in Austin.

The public hearing will begin at 1:00 p.m. and TDI will take testimony on the following rules:

Chapter 133. General Medical Provisions

Subchapter D. Dispute of Medical Bills

§133.305. MDR--General.

§133.307. MDR of Fee Disputes.

§133.308. MDR by Independent Review Organizations.

The proposed rules were published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9257), and may be viewed on the TDI website at *http://www.tdi.state.tx.us/wc/rules/proposedrules/toc.html*.

TDI offers reasonable accommodations for persons attending meetings, hearings, or educational events, as required by the Americans with Disabilities Act. If you require special accommodations, contact Idalia Cantu at (512) 804-4403 at least two days prior to the hearing date.

For further information regarding this notice, contact Blanca Guardiola at (512) 804-4716.

TRD-200800165
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: January 15, 2008

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 1035 "2 Times Lucky"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1035 is "2 TIMES LUCKY". The play style for this game is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1035 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 1035.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play

Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 2X, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $200, $2,000 and $20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1035 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
2X SYMBOL	DBL
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$200	TWO HUND
$2,000	TWO THOU
$20,000	20 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1035 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00 or $200.

I. High-Tier Prize - A prize of $2,000 or $20,000.

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1035), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1035-0000001-001.

L. Pack - A pack of "2 TIMES LUCKY" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B. C and D configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "2 TIMES LUCKY" Instant Game No. 1035 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "2 TIMES LUCKY" Instant Game is determined once the latex on the ticket is scratched off to expose 21 (twenty-one) Play Symbols. If a player reveals the LUCKY NUMBER in any game, the player wins prize for that game. If a player reveals a "2X", the player wins DOUBLE the prize for that game! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 21 (twenty-one) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 21 (twenty-one) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 21 (twenty-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 21 (twenty-one) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols.

C. No duplicate non-winning GAME 1 through 5 play symbols on a ticket.

D. Non-winning prize symbols will never be the same as the winning prize symbol(s).

E. Each GAME, other than GAME 5, may win more than once, but there will be no more than 10 wins per ticket.

F. The "2X" (doubler) play symbol will appear only on intended winning tickets as dictated by the prize structure.

G. No prize amount in a non-winning spot will correspond with the corresponding GAME 1 through 5 play symbol (i.e. 5 play symbol in GAME 3 and $5 prize symbol in GAME 3).

2.3 Procedure for Claiming Prizes.

A. To claim a "2 TIMES LUCKY" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $50.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "2 TIMES LUCKY" Instant Game prize of $2,000 or $20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "2 TIMES LUCKY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "2

TIMES LUCKY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "2 TIMES LUCKY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 tickets in the Instant Game No. 1035. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1035 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	892,080	7.94
$4	495,600	14.29
$5	84,960	83.33
$10	84,960	83.33
$20	42,480	166.67
$50	33,217	213.14
$200	6,254	1,132.08
$2,000	31	228,387.10
$20,000	17	416,470.59

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.32. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1035 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1035, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200800125

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 10, 2008

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Instant Game Number 1037 "Majestic Jewels"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1037 is "MAJESTIC JEWELS". The play style is "coordinate with prize legend".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1037 shall be $3.00 per ticket.

1.2 Definitions in Instant Game No. 1037.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: A1, A2, A3, A4, A5, A6, B1, B2, B3, B4, B5, B6, C1, C2, C3, C4, C5, C6, D1, D2, D3, D4, D5, D6, E1, E2, E3, E4, E5, E6, F1, F2, F3, F4, F5 and F6.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1037 - 1.2D

PLAY SYMBOL	CAPTION
A1	
A2	
A3	
A4	
A5	
A6	
B1	
B2	
B3	
B4	
B5	
B6	
C1	
C2	
C3	
C4	
C5	
C6	
D1	
D2	
D3	
D4	
D5	
D6	
E1	
E2	
E3	
E4	
E5	
E6	
F1	
F2	
F3	
F4	
F5	
F6	

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1037 - 1.2E

CODE	PRIZE
THR	$3.00
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

G. Low-Tier Prize - A prize of $3.00, $5.00, $10.00, $15.00 or $20.00.

H. Mid-Tier Prize - A prize of $30.00, $40.00, $50.00, $60.00, $75.00, $100, $150, $300 or $500.

I. High-Tier Prize - A prize of $3,000 or $30,000.

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1037), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1037-0000001-001.

L. Pack - A pack of "MAJESTIC JEWELS" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MAJESTIC JEWELS" Instant Game No. 1037 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MAJESTIC JEWELS" Instant Game is determined once the latex on the ticket is scratched off to expose 48 (forty-eight) Play Symbols. The player will scratch the "CROWN GRID COORDINATES" play symbols. The player will then scratch only the boxes on the CROWN GRID whose letters and numbers match the "CROWN GRID COORDINATES". If a player reveals 3 matching play symbols, the player wins the prize according to the prize legend. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 48 (forty-eight) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 48 (forty-eight) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 48 (forty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 48 (forty-eight) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. A ticket may win up to four (4) times per the prize structure.

C. No duplicate CROWN GRID COORDINATE play symbols on a ticket.

D. No grid will be used consecutively.

2.3 Procedure for Claiming Prizes.

A. To claim a "MAJESTIC JEWELS" Instant Game prize of $3.00, $5.00, $10.00, $15.00, $20.00, $30.00, $40.00, $50.00, $60.00, $75.00, $100, $150, $300 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, required to pay a $30.00, $40.00, $50.00, $60.00, $75.00, $100, $150, $300 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MAJESTIC JEWELS" Instant Game prize of $3,000 or $30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MAJESTIC JEWELS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "MAJESTIC JEWELS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "MAJESTIC JEWELS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 1037. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1037 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$3	725,760	6.94
$5	282,240	17.86
$10	161,280	31.25
$15	80,640	62.50
$20	40,320	125.00
$30	12,600	400.00
$40	8,358	603.02
$50	6,300	800.00
$60	5,250	960.00
$75	3,150	1,600.00
$100	1,932	2,608.70
$150	840	6,000.00
$300	420	12,000.00
$500	126	40,000.00
$3,000	25	201,600.00
$30,000	20	252,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.79. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1037 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1037, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200800126
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 10, 2008

♦ ♦ ♦

Instant Game Number 1045 "Texas NBA"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1045 is "TEXAS NBA". The play style is "key number match with doubler.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1045 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1045.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, HOOP SYMBOL, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $1,000, $50,000 and MERCH SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1045 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
HOOP SYMBOL	DBLR
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$50.00	FIFTY

$100	ONE HUND
$1,000	ONE THOU
$50,000	50 THOU
MERCH SYMBOL	PRIZE PACK

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1045 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100 or MERCH.

I. High-Tier Prize - A prize of $1,000, $5,000 or $50,000.

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1045), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 75 within each pack. The format will be: 1045-0000001-001.

L. Pack - A pack of "TEXAS NBA" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TEXAS NBA" Instant Game No. 1045 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in "TEXAS NBA" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) play symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE shown for that number. If a winning PRIZE symbol is "MERCH", the player wins a NBA merchandise PRIZE PACK! If a player reveals a "hoop" play symbol, the player wins DOUBLE the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Non-winning prize symbols will not match a winning prize symbol on a ticket.

C. No four or more identical non-winning prize symbols on a ticket.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. No prize amount in a non-winning spot will correspond with any YOUR NUMBER play symbol (i.e. 20 and $20).

G. The "HOOP" (doubler) play symbol will be used only as dictated by the prize structure.

H. The "HOOP" (doubler) play symbol will appear only once on winning tickets.

I. The top prize will appear on all tickets unless otherwise restricted by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS NBA" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00 or $100 a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $50.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TEXAS NBA" Instant Game prize of MERCH, $1,000, $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TEXAS NBA" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "TEXAS NBA" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "TEXAS NBA" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1045. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1045 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	800,000	7.50
$10	460,000	13.04
$15	120,000	50.00
$20	80,000	75.00
$50	80,600	74.44
$100	19,350	310.08
MERCH	3,636	1,650.17
$1,000	60	100,000.00
$5,000	15	400,000.00
$50,000	6	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.84. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1045 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1045, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200800127
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 10, 2008

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Instant Game Number 1046 "Fun $50's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1046 is "FUN $50'S". The play style for this game is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1046 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 1046.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, STACK OF BILLS SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $1,000 and $20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1046 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
STACK OF BILLS SYMBOL	WINALL
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$1,000	ONE THOU
$20,000	20 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1046 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00 or $100.

I. High-Tier Prize - A prize of $1,000 or $20,000.

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1046), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1046-0000001-001.

L. Pack - A pack of "FUN $50'S" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B. C and D configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "FUN $50'S" Instant Game No. 1046 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "FUN $50'S" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS to either WINNING NUMBER, the player wins PRIZE for that number. If the player reveals a stack of bills symbol, the player WINS ALL 10 PRIZES! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Non-winning prize symbols will not match a winning prize symbol on a ticket.

C. No three or more identical non-winning prize symbols on a ticket.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. No non-winning prize amounts will correspond with its YOUR NUMBER play symbol (i.e. 20 and $20).

F. The "stack of bills" (win all) play symbol will only appear on winning tickets as dictated by the prize structure.

G. The top prize will appear on all tickets unless otherwise restricted by the prize structure.

H. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

I. When the "stack of bills" (win all) play symbol appears, there will be no occurrence of any YOUR NUMBER play symbol matching a WINNING NUMBER play symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "FUN $50'S" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $50.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "FUN $50'S" Instant Game prize of $1,000 or $20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "FUN $50'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "FUN $50'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "FUN $50'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment

to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 1046. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1046 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2	964,800	8.33
$4	514,560	15.63
$5	96,480	83.33
$10	96,480	83.33
$20	64,320	125.00
$50	64,320	125.00
$100	2,948	2,727.27
$1,000	22	365,454.55
$20,000	10	804,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.46. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1046 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1046, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200800128
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 10, 2008

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North Central Texas Council of Governments

Request for Proposals to Manage an Air Quality Public Awareness Campaign through Traffic Messaging and Interactive Media

Consultant Proposal Request

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consultant firm(s) to manage air quality public awareness campaign messages during traffic reports on television and radio, and as part of traffic messages sent through interactive media such as the internet, Personal Digital Assistants (PDAs), text messages, and e-mail. This campaign will be a combination of several air quality programs, such as the Air Quality Public Education and Information Program, AirCheck Texas Program, and the Regional Smoking Vehicle Program. The North Texas region is currently in nonattainment under the U.S. Environmental Protection Agency's 8-hour standard for ozone. To demonstrate attainment by the end of the 2009 ozone season, it is critical that the general public understand the air quality situation and the programs in place to help them develop routines in their daily lives that positively impact air quality in North Texas. The purpose of this public awareness campaign is to educate the public on how they can positively impact air quality through everyday actions. The budget for this project is approximately $110,000.

Due Date

Proposals must be received no later than 5 p.m., Central Daylight Time, on Friday, February 22, 2008, to Chris Klaus, Senior Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the Request for Proposals, contact Therese Bergeon, at (817) 695-9267.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200800168
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: January 15, 2008

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Public Utility Commission of Texas

Amended Notice of Application for Telecommunications Service in Uncertificated Area

Notice is given to the public of an application filed with the Public Utility Commission of Texas on December 13, 2007, for telecommunications service in uncertificated area pursuant to P.U.C. Substantive Rule §26.421, and Offer of DialToneServices, L.P. to Provide Service. The application was previously styled Application of DialToneServices, L.P. for Designation as an Eligible Telecommunications Provider.

Docket Title and Number: Application of Karolena Harris for Telecommunications Service in Uncertificated Area Pursuant to P.U.C. Substantive Rule §26.421 and Offer of DialToneServices, L.P. to Provide Service. Docket Number 35115.

The Application: Mrs. Karolena Harris filed an application requesting that DialToneServices, L.P. be designated to provide telecommunications service for herself and other residents in uncertificated portions of Sabine County. Concurrent with this application, DialToneServices, L.P. states that it is willing to provide the service requested and seeks eligible telecommunications provider status in that area to allow reimbursement for the cost of providing such service.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by February 15, 2008. 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 Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 35115.

TRD-200800178
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 16, 2008

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Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on January 9, 2008, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cebridge Acquisition, LP, doing business as Suddenlink Communications, for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 35208 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the expansion of the service area footprint to include the City Limits of Mt. Vernon and Floydada, Texas.

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 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35208.

TRD-200800154
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 14, 2008

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Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 10, 2008, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of DTE Energy Trading, Inc. for Retail Electric Provider (REP) Certification, Docket Number 35216 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 1, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35216.

TRD-200800166
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 15, 2008

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Notice of Application for Certificate of Convenience and Necessity for a Proposed Transmission Line in Gaines and Yoakum Counties, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on December 18, 2007, for a proposed 230-kV transmission line in Gaines and Yoakum Counties, Texas.

Docket Style and Number: Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line within Gaines and Yoakum Counties, Texas. Docket Number 35106.

The Application: The application of Southwestern Public Service Company (SPS) for a proposed transmission line is designated as the Mustang Station to Seminole Interchange Substation 230 kV Transmission Line Project. On January 7, 2008, SPS amended its application to extend the intervention date to February 18, 2008.

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 1-888-782-8477. The deadline for intervention in this proceeding is February 18, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 35106.

TRD-200800130
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 10, 2008

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Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on December 4, 2007, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA).

Project Title and Number: Valley Telephone Cooperative, Inc's Petition for Expanded Local Calling Service of the San Miguel Exchange, Project Number 35092.

The petitioners in the San Miguel exchange request ELCS to the exchanges of Charlotte, Dilley, Devine, Jourdanton, and Pleasanton.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 7, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2789. All comments should reference Project Number 35092.

TRD-200800155
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 14, 2008

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Public Notice of Workshop - Rulemaking Relating to Allocation of the Administrative Fee of the Electric Reliabililty Council of Texas

The staff of the Public Utility Commission of Texas (commission) will hold a workshop on Tuesday, February 5, 2008, at 9:30 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78711. Project Number 34889, *Rulemaking Relating to Allocation of the Administrative Fee of the Electric Reliability Council of Texas*, has been established for this proceeding. Ten days prior to the workshop, the commission shall make an agenda for this workshop available in Central Records under Project Number 34889.

Questions concerning the workshop or this notice should be referred to Jonathan Griffin, Rate Regulation Division, at (512) 936-7378. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200800179
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 16, 2008

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Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Hillsboro, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Hillsboro Municipal Airport during the course of the next five years through multiple grants.

Current Project: City of Hillsboro. TxDOT CSJ No.: 0809HILLS. Rehabilitate and mark runway 16-34, rehabilitate hangar access taxiways, rehabilitate and mark parallel taxiway to runway 16, rehabilitate turnaround runway 34 end, and rehabilitate apron.

There is no DBE goal for the current project. TxDOT Project Manager is Alan Schmidt.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Construct hangar

2. Extend parallel taxiway south to runway 34

The City of Hillsboro reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent Airport Layout Plan are available online at **www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm** by selecting "Hillsboro Municipal Airport" The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may

be emailed by request or downloaded from the TxDOT web site at **www.dot.state.tx.us/services/aviation/consultant.htm**. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Six completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than February 15, 2008 at 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Delia L. Molina.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation engineering proposals can be found at **http://www.dot.state.tx.us/services/aviation/consultant.htm**. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Delia L. Molina, Grant Manager. For technical questions, please contact Alan Schmidt, Project Manager.

TRD-200800172
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 15, 2008

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Notice - Request for Proposal, Traffic Safety Program

In accordance with 43 TAC §§25.901, et seq., the Texas Department of Transportation (department) is requesting project proposals to support the goals and strategies of a traffic safety program to reduce the number of motor vehicle related crashes, injuries, and fatalities in Texas. These goals and strategies form the basis for the Fiscal Year 2009 (FY09) Highway Safety Performance Plan (HSPP).

The authority and responsibility of the traffic safety grant program derives from the National Highway Safety Act of 1966 (23 USC §§401, et seq.), and the Texas Traffic Safety Act of 1967 (Transportation Code, Chapter 723). Traffic Safety is an integral part of the Texas Department of Transportation and works through the department's 25 districts for local projects. The program is administered at the state level by the department's Traffic Operations Division. The executive director of the department is the designated Governor's Highway Safety Representative.

The following are the 2009 HSPP Program Areas for which projects may be submitted: Planning and Administration; Alcohol and Other Drug Countermeasures; Emergency Medical Services; Motorcycle Safety; Occupant Protection; Pedestrian/Bicycle Safety; Police Traffic Services; Speed Control; Traffic Records; Driver Education and Behavior; Railroad/Highway Crossing; Roadway Safety; Safe Communities; and School Bus. Eligible organizations are state and local governments, educational institutions, and non-profit organizations.

The Request for Proposals for Fiscal Year 2009, as well as the on-line eGrants proposal application system, is available on the department website at the following location: **http://www.dot.state.tx.us/services/traffic_operations/traffic_safety.htm**. Proposals for FY09 must be completed using the eGrants system. New eGrants users will need to submit a request for access to the system through the New User link on the eGrants webpage.

Proposals submitted using the eGrants system must be submitted no later than **5 p.m., March 7, 2008**. The eGrants system will not allow proposal submission after this date and time.

Video Conference training on submitting proposals through eGrants, will be offered at various department locations across the state. Please contact Traffic Safety Specialists in your area or send a note to eGrants@dot.state.tx.us to learn about locations near you.

Potential subgrantees may attend eGrants proposal submittal training on one of these dates:

January 31, 2008

February 1 and 19, 2008

If you have questions please contact Ms. Susan Warren at (512) 416-3177 or at swarre1@dot.state.tx.us in the department's Traffic Operations Division, Traffic Safety Section.

TRD-200800171
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 15, 2008

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University of North Texas

Invitation for Consultants to Provide Offers of Consulting Services Related to Dining Services

Pursuant to the provisions of Texas Government Code, Chapter 2254, the University of North Texas (UNT) extends this invitation (Invitation) to qualified and experienced consultants interested in providing the consulting services described in this Invitation to the University of North Texas and its member institutions.

Scope of Work:

The selected consulting firm will be responsible for assisting UNT in providing an assessment of the current dining program relative to industry standards and current trends. UNT is accepting proposals and intends to enter into an agreement with a vendor that specializes in consulting services to evaluate the dining services offered by UNT. Generally, the scope of services supplied by the selected vendor will include the following:

(1) review of UNT financial, student, and operating data; and

(2) site visits to assess the appearance and functionality of operating units, catering and retail operations, and administrative support and management of existing dining services.

Specifications:

Any consultant submitting an offer in response to this Invitation must provide the following:

(1) the consultant's legal name, including type of entity (individual, partnership, corporation, etc.) and address;

(2) background information regarding the consultant, including the number of years in business and the number of employees;

(3) information regarding the qualifications, education, and experience of the team members proposed to conduct the requested services;

(4) the hourly rate to be charged for each team member providing services;

(5) the earliest date by which the consultant could begin providing the services;

(6) a list of five client references, including any complex institutions or systems of higher education for which the consultant has provided similar consulting services;

(7) a statement of the consultant's approach to providing the services described in the Scope of Work section of this Invitation, any unique benefits the consultant offers UNT, and any other information the consultant desires UNT to consider in connection with the consultant's offer;

(8) information to assist UNT in assessing the consultant's demonstrated competence and experience providing consulting services similar to the services requested in this Invitation;

(9) information to assist UNT in assessing the consultant's experience performing the requested services for other complex institutions or systems of higher education;

(10) information to assist UNT in assessing whether the consultant will have any conflicts of interest in performing the requested services;

(11) information to assist UNT in assessing the overall cost to UNT for the requested services to be performed; and

(12) information to assist UNT in assessing the consultant's capability and financial resources to perform the requested services.

Please respond to the Request for Proposal located at http://pps.unt.edu (RFP752-8-54826-CS).

Selection Process:

The consulting services sought herein have not been requested previously.

Selection of the Successful Offer (defined below) submitted in response to this Invitation by the Submittal Deadline (defined below) will be made using the competitive process described below. After the opening of the offers and upon completion of the initial review and evaluation of the offers submitted, selected consultants may be invited to participate in oral presentations. The selection of the Successful Offer may be made by UNT on the basis of the offers initially submitted, without discussion, clarification or modification. In the alternative, selection of the Successful Offer may be made by UNT on the basis of negotiation with any of the consultants. At UNT's sole option and discretion, it may discuss and negotiate all elements of the offers submitted by selected consultants within a specified competitive range. For purposes of negotiation, a competitive range of acceptable or potentially acceptable offers may be established comprising the highest rated offers. UNT will provide each consultant within the competitive range with an equal opportunity for discussion and revision of its offer. UNT will not disclose any information derived from the offers submitted by competing consultants in conducting such discussions. Further action on offers not included within the competitive range will be deferred pending the selection of the Successful Offer, however, UNT reserves the right to include additional offers in the competitive range if deemed to be in its best interest. After the submission of offers but before final selection of the Successful Offer is made, UNT may permit a consultant to revise its offer in order to obtain the consultant's best final offer. UNT is not bound to accept the lowest priced offer if that offer is not in its best interest, as determined by UNT. UNT reserves the right to:

(a) enter into agreements or other contractual arrangements for all or any portion of the Scope of Work set forth in this Request with one or more consultants;

(b) reject any and all offers and re-solicit offers; or

(c) reject any and all offers and temporarily or permanently abandon this procurement, if deemed to be in the best interest of UNT.

For additional selection criteria, please review the Request for Proposal found at http://pps.unt.edu (RFP752-8-54826-CS).

Criteria for Selection:

The successful offer (Successful Offer) must be submitted in response to this Invitation by the Submittal Deadline will be the offer that is the most advantageous to UNT in UNT's sole discretion. Offers will be evaluated by University of North Texas personnel. The evaluation of offers and the selection of the Successful Offer will be based on the information provided to UNT by the consultant in response to the Specifications section of this Request. Consideration may also be given to any additional information and comments if such information or comments increase the benefits to UNT. The successful consultant will be required to enter into a contract acceptable to UNT.

Consultant's Acceptance of Offer:

Submission of an offer by a consultant indicates:

(1) the consultant's acceptance of the Offer Selection Process, the Criteria for Selection, and all other requirements and specifications set forth in this Request; and

(2) the consultant's recognition that some subjective judgments must be made by UNT during this Request for Proposal process.

Finding by President:

The President of the University of North Texas finds that the consulting services are necessary because the University of North Texas does not have the specialized experience or the staff resources available to evaluate the existing department and services. The University of North Texas believes that such expert consulting services will be a cost effective method to evaluate the existing dining services, provide information concerning outsourcing dining services, and provide comparisons and recommendations regarding whether maintaining internal operation of dining services or outsourcing these duties to an external vendor would provide better dining service to UNT students and be more advantageous to the institution.

Submittal Deadline:

To respond to this Invitation, consultants must respond to the Request for Proposal located at http://pps.unt.edu (RFP752-8-54826-CS). The Request for Proposal must be submitted in a clear and concise written format to: Carrie Stoeckert, Assistant Director, University of North Texas, 2310 North Interstate 35-E, Denton, Texas 76205 or P.O. Box 310499, Denton, Texas 76201. Offers must be submitted in an envelope or other appropriate container and the name and return address of the consultant must be clearly visible. All offers must be received at the above address no later than 2:00 p.m., CST, Monday, February 25, 2008 (Submittal Deadline).

Questions:

Questions concerning this Invitation should be directed to: Carrie Stoeckert, Assistant Director, at carries@unt.edu, University of North Texas, 2310 North Interstate 35-E, Denton, Texas 76205 or P.O. Box 310499, Denton, Texas 76201. UNT may in its sole discretion respond in writing to questions concerning this Invitation. Only UNT's responses made by formal written addenda to this Invitation shall be binding. Oral or other written interpretations or clarifications shall be without legal effect.

TRD-200800186
Joey Saxon
Director of Purchasing and Payment Services
University of North Texas
Filed: January 16, 2008

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 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 "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).